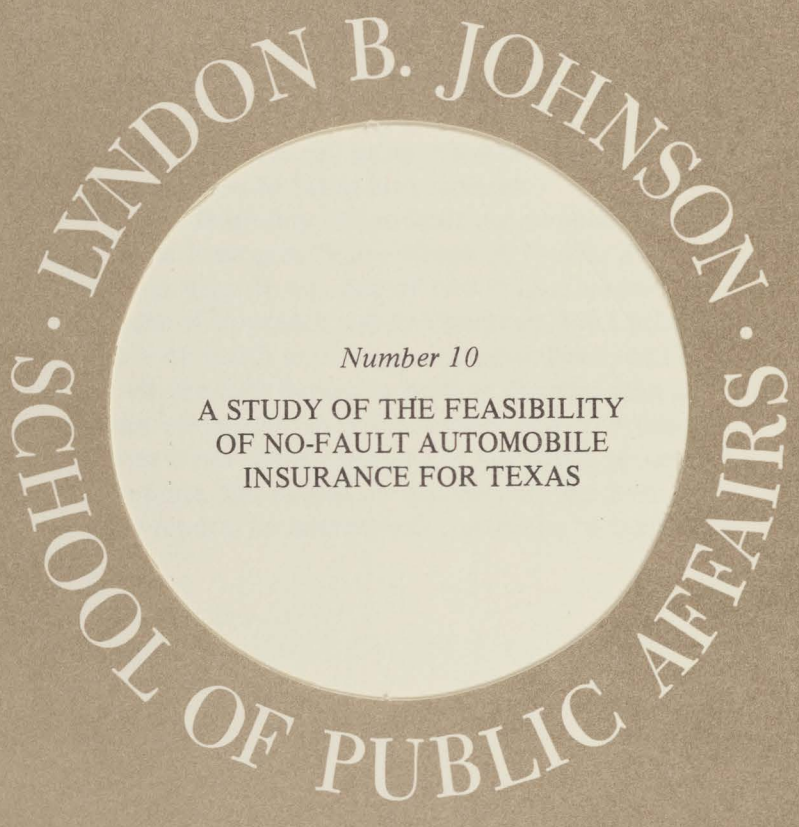
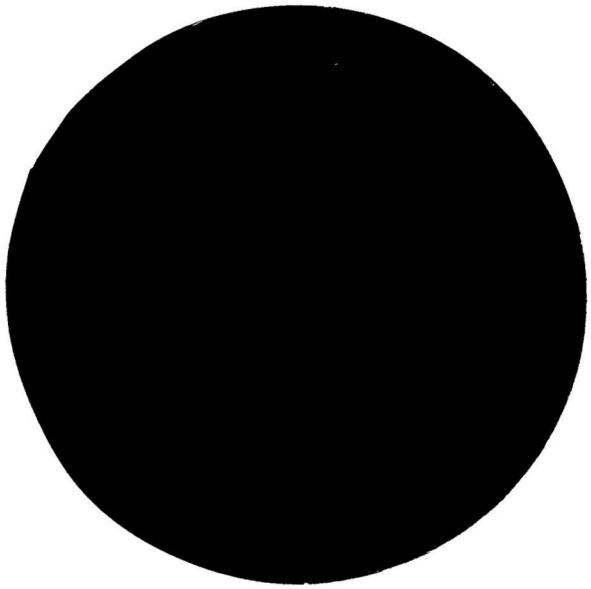
POLICY RESEARCH PROJECT REPORT



Number 10

A STUDY OF THE FEASIBILITY OF NO-FAULT AUTOMOBILE INSURANCE FOR TEXAS

THE UNIVERSITY OF TEXAS AT AUSTIN



LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS

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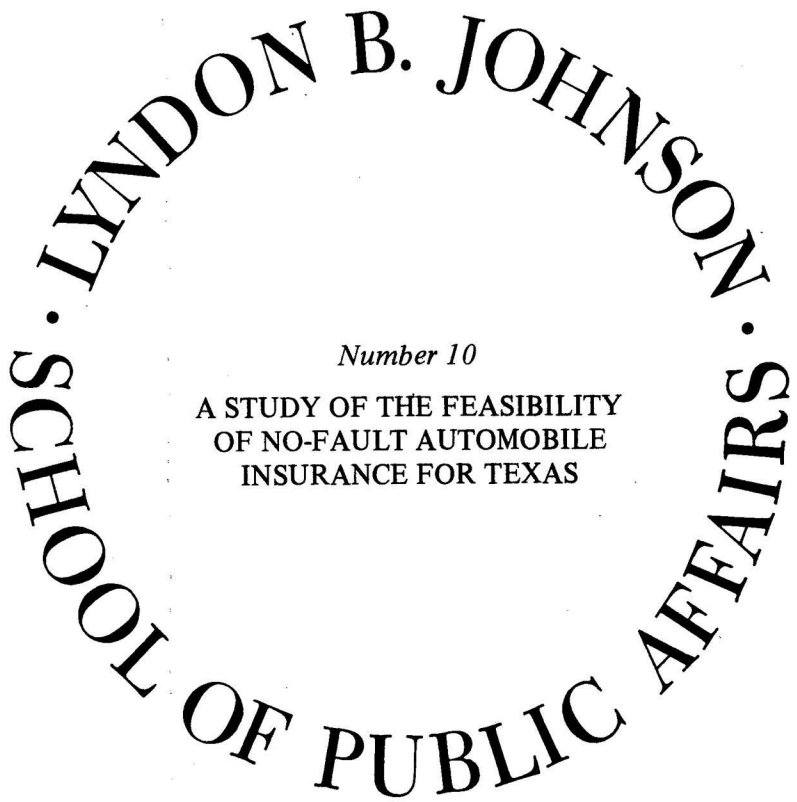

Number 10

A STUDY OF THE FEASIBILITY OF NO-FAULT AUTOMOBILE INSURANCE FOR TEXAS

A Report by
The State Insurance Policy Research Project
Lyndon B. Johnson School of Public Affairs
The University of Texas at Austin
1975

FOREWORD

The Lyndon B. Johnson School of Public Affairs has established interdisciplinary research on policy problems as the core of its educational program. A major part of this program is the policy research project, in the course of which three faculty members, each from a different profession or discipline, and about fifteen graduate students with diverse backgrounds research a policy issue of concern to an agency of government. This "client orientation" brings the students face to face with administrators, legislators, and other officials active in the policy process, and demonstrates that research in a policy environment demands special talents. It also illuminates the difficulties of using research findings to bring about change where political realities must be taken into account.

This report on the feasibility of no-fault automobile insurance for Texas was produced by the State Insurance Policy Research Project at the LBJ School during the 1973-74 academic year. It was one of two studies undertaken at the request of the Texas State Board of Insurance and its Chairman, Joe Christie. The second study was on the feasibility of health maintenance organizations for Texas.

The intention of the LBJ School is both to develop men and women with the capacity to perform effectively in public service and to produce research that will enlighten and inform those already engaged in the policy process. The project which resulted in these reports has helped to accomplish the former; it is our hope and expectation that the reports themselves will contribute to the latter.

William B. Cannon
Dean

TABLE OF CONTENTS

PREFACE

Historically, damages and injuries resulting from automobile accidents in the United States have been remedied through a system of tort law which makes a determination of who is at fault for causing the injuries and damages in a particular case and assesses against him the responsibility for paying the losses. Accompanying this legal system is an insurance system under which persons deemed liable for injuries to persons and property could look to insurers to pay the judgment rather than their other personal financial resources. As a result of problems and criticisms associated with these systems, among them the fact that many accident victims receive no reparation for their losses, there has developed in recent years a number of so-called no-fault automobile insurance plans which make substantial changes in the manner of compensating automobile accident losses. The essential characteristic of these plans is that they pay basic benefits for certain losses directly to the insured regardless of fault while limiting, at least partially, the person's traditional right to sue for recompense of those losses. The no-fault plans in existence at the present time have been adopted by states in their role as insurance regulators, but within the past few years, there has also been proposed legislation for a national system of no-fault insurance under consideration in the Congress of the United States.

In light of these developments and the growing interest in possible no-fault legislation in Texas, the State Board of Insurance through its Chairman, Joe Christie, requested the Lyndon B. Johnson School of Public Affairs to conduct a study of the feasibility of no-fault automobile insurance for Texas. This study was one of two undertaken during the 1973-74 school year by one of the School's policy research project seminars, a regular organizational component of the School's academic program structured with three or four faculty members and fifteen graduate students. In the instant case, with two major projects to accomplish, the graduate students were organized into two task groups, with six members assigned to the no-fault insurance study and nine members to the study of health maintenance organizations. The names of students and faculty associated with this study of no-fault insurance are indicated on the following page with the exception of Jared E. Hazleton, associate professor of public affairs. Professor Hazleton initially coordinated the project, but departed on a leave of absence at the end of the fall semester and is not, therefore, associated with or responsible for the findings and recommendations of this report.

With a broad mandate to study any and all aspects of no-fault automobile insurance, including an assessment of the relatively limited experience of other states and to formulate appropriate alternatives and recommendations with respect to possible changes in the Texas system, it was inevitable that there would be a high level of interest on the part of the many individuals and groups who have professional, economic, social, and individual interests in the matters under study. Accordingly, every effort was made to make contact with these persons and groups and to elicit their experiences, individual points of view, and recommendations. The results of this effort were most beneficial and rewarding to the project and its ultimate product as presented here, and we wish to express our gratitude for the valuable contributions made by all who assisted us. These persons are too numerous to mention here, but they are listed at the end of the study. All of the faculty and students associated with this project express their deepest appreciation to the State Board of Insurance, and particularly Chairman Christie, for the unique and challenging opportunity to engage in this project, for able and prompt technical support on numerous occasions, and for providing a portion of the financial resources required to complete the study. Lastly and importantly, we are indebted to the Ford Foundation for funding a portion of the costs involved in this research effort.

Lynn F. Anderson
Project Coordinator

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CHAPTER I

THE TORT AUTOMOBILE REPARATIONS SYSTEM: PROBLEM OR PROMISE

THE DEVELOPMENT OF TORT LAW

The chief function of government in any society is the maintenance of order. Rules are enacted providing that individuals should not impinge on the essential rights of others and discouraging willful disturbers of order from becoming disturbers again. Laws are enacted calling for the compensation of victims of disturbing activities so that these individuals may quickly become healthy members of society and so they do not feel that they must take revenge on the person who has done them a wrong. Order must be maintained. Governments, if they are to stay in power, must provide sanctions against the disorderly, and must also take measures for insuring that the victims of disorder receive just and fair compensation for the wrongs that have been perpetrated against them.

For the purpose of dealing with the disorder in society caused by automobile accidents, the United States has developed the "fault insurance system." This sytem is composed of two parts: (1) fault law, which determines who has caused the disorder; and (2) insurance, which is the means of correcting the wrong that has occurred. It is a system that theoretically deals punitively with the disorderly and also compensates victims so that they will not be encouraged to be disorderly themselves.

Later portions of this report will deal with the ultimate feasibility of the total system. This section deals with the origin and development of tort law as it applies to automobiles and with some of the current problems facing this area of the law. It is noted that the law had to deal with the disorder caused by traffic accidents long before insurance became widely used to pay the bill.

The Concepts of Tort Liability

During the development of tort law there have been two concepts of liability: (1) the idea that men go about their daily activities at the risk of injuring others and are strictly liable for any injuries that may arise from their actions; and (2) the idea that a man is liable only for actions that were his fault. These concepts are as old as the history of tort law itself, and at one time or another each has been the guiding principle in the area of accidental physical damage.[1]*

While the idea of fault has been around as long as the idea of tort law itself, the idea of negligence is a relatively new concept. In fact, the concept of negligence was a development of the nineteenth century. It arose from the need for not placing an overly burdensome blame upon dangerous but useful activity. The industrial revolution needed an interpretation of the law that would protect it from having to spend its precious capital on the increasing number of injured workers. Proof that one's activities caused another's injuries was no longer sufficient as a grounds for the recovery of damages. Negligence had to be proved if any damage was to be compensated. It was this part of tort law that was applied to the first horse-and-buggy accidents, then railroad accidents, and finally to automobile accidents. Transportation was a dangerous but useful activity, and it needed protection to grow. Willful negligence was extremely hard to prove, and judges and juries who recognized the importance of industry to their communities were very unwilling to grant large damages even when negligence was proven. All industry and not just transportation was in part subsidized by its innocent and unwilling victims. The cost of compensating the victim was definitely outweighed by the benefit derived by society from industry.[2]

This concept of negligence, which supplanted the concept of strict liability based on pure fault, was at its height at the turn of the century. Since that time the law has begun to swing the other way, beginning with the enactment of the first constitutional workmen's compensation law in 1911 in Wisconsin. The concept of strict liability—whereby one individual is held accountable for injuries to another regardless of fault—has become more and more dominant.[3]

In light of the ebb and flow of these varying concepts of tort liability it is interesting to examine just how and why they have grown in importance at one time or another. As

*Footnotes at end of chapter, page 7.

an important corollary it is also interesting to note the development of the negligence principle out of fault law, and the causes of its rise and apparent fall in importance in the field of automobile accidents.

The Growth of Negligence Law

England, the birth place of our system of law, instituted the rudimentary steps in the development of common law with the introduction of the writ of trespass in the early thirteenth century. This was the first real attempt at maintaining order by something more advanced than the traditional approach of "an eye for an eye, and a tooth for a tooth."

The remedies for wrongs during this period could only be gained by the issuance of a writ to bring a defendant into court, and only the king could issue such a writ since he determined what was to be considered by his court.[4] Writs of trespass were issued for obvious breaches of the peace such as assaults, beatings, and destruction of property as well as unintentional actions which caused destruction of another's property. Trespass was totally criminal in nature, and if an action did not fall into one of the defined categories, then no remedy could be sought.[5]

The purpose of the original remedies in trespass cases was the punishment of the wrongdoer. Eventually, however, the courts realized that the peace could only be maintained if the victim of a crime received some compensation for the wrong that had been done to him, and this aspect was incorporated into the deliberations of the judges and juries.

The primary problem with the writ of trespass was that new cases began to appear that were not covered by writs, but needed to be covered. In order to deal with this situation:

> . . .the King's Council (adopted) the Statute of Westminster II (in 1285) providing in substance that whenever in one case a writ was found and in like cases falling under like law no such writ was discoverable, Chancery was authorized, subject to certain precautions, to issue a new writ appropriate to the particular needs of the case before the court. Hence there came into being a companion form of action known as the action of trespass on the case. This form was available whenever the complaint showed a complete absence of force or an injury which was only indirectly afflicted. The new action had become familiar by the first half of the fourteenth century.[6]

An entirely new mode for receiving damages had been established, and our whole theory of tort liability was to spring from this new form of action.

On face value it does not seem that anything new had happened with the adoption of the Statute of Westminster II. However, as Prosser points out in his casebook on torts:

> The distinction was not one between intentional and unintentional conduct. The emphasis was upon the causal sequence, rather than the character of the defendant's wrong. Trespass would lie for all forcible, direct injuries, even though they were not intended, while the action on case might be maintained for those which were intended but not forcible, or not direct. There were, however, two significant points of difference between the two actions. Trespass, because of its quasi-criminal character, required no proof of any actual damage, since invasion of the plaintiff's rights by the criminal conduct was regarded as a tort itself; while in action on the case, which developed purely as a civil remedy, there could ordinarily be no liability unless actual damage was proved. Also, in its earlier stages trespass was identified with the view that liability might be imposed without regard to the defendant's fault, while case from the beginning required proof of either wrongful intent or negligence.[7]

Fault had been established as an important part of the common law, and with the coming industrial revolution it was to become the most important part.

The fact that fault had been established as a means of determining liability in cases where actions were unintentional did not mean that the idea of strict liability was immediately abandoned. The defendant in action on case still had his actions linked to the injury that was suffered by the plaintiff. The establishment of this causal link, which was still fairly easy, meant that the defendant would have to pay for the damage he had caused. The only way in which the defendant could get out of this payment was by showing that he was absolutely without fault. The burden of proof rested on the defendant, and it was to remain there until the early 1800s.

> In the early 1800s, due primarily to the great increase in horse-and-buggy traffic collisions, this simple basis of liability for unintended hurts was quickly and radically changed. . . .The defendant was no longer required to show that the injury was unavoidable or utterly without his fault. . . .His duty was so modified that he was required merely to exercise reasonable care in the operation of his horse or vehicle. Reasonable care depended on whether as an ordinary prudent man he should have foreseen some harm to the injured person or someone so situated.[8]

Freedom of the road–the cause and effect of the industrial revolution which could only thrive on mobility–in a few short years had caused the courts to replace strict liability with negligence. Society wanted its own fortunes increased and this meant that risks associated with traveling had to be greatly reduced. With the adoption of the concept of negligence in traffic accidents a traveler would only risk his fortune if a plaintiff could prove that he had not acted as a reasonable man would have acted. The burden of proof had been placed on the victim. Society, through its courts, had determined that the new order being brought about by the industrial revolution was an order that needed protection under the law.[9]

It must be pointed out that much of our law is not based on eternal natural rights, but on principles of morality and public policy which change over time. This is especially significant in the case of torts. Rulings in this area tend to reflect and protect the pervasive moral and political values during a given period of time. During the nineteenth century the prevailing public policy was that of making what was good for industry good for society. Negligence law both reflects this attitude and protects individuals in order that the attitude might become a reality.

Just how far this protection extended can be seen in its application to traffic accidents.

> . . .If neither party had failed to exercise reasonable care, the collision was an accident and no liability ensued. . . .If the danger was obvious, the victim assumed the risk. If he failed to exercise reasonable care for his own safety, even if the dangers were obvious, he too was negligent and could recover nothing for his injury. (This is the concept of contributory negligence.) If the injury was fatal, there could be no recovery for the injuries suffered before death or for death itself. And what is more, the victim was given the burden of proving his case at every step–the burden of showing that the defendant had harmed the victim; that the law imposed a duty on the defendant to exercise care with respect to the victim; that he had failed to exercise reasonable care in his behalf; that the harm inflicted was a proximate consequence of defendant's conduct and not remote; that the victim had himself exercised reasonable care for his own safety; and what losses the victim suffered.[10]

Under these conditions, a plaintiff who was contributorily negligent could receive damages from a defendant only if he could prove that the defendant had enough time to see that an accident would be occurring, and subsequently did not take action to avoid it. Only if this could be proved could a victim's contributory negligence during the accident not defeat his suit.

The Decline of Negligence Law

The staggering toll in property and human life that resulted from uncontrolled adventures of industry into more and more hazardous areas was a leading factor in bringing about the reform movement in this country at the turn of the century. Society decided that it could no longer pay the price in human capital which industry needed as input into its production schedules. The benefits of industry were outweighed by the costs to the families of injured individuals and to society as a whole.

Child labor laws, 40-hour work weeks, and workmen's compensation were all adopted to reduce the number of victims of industrial mishaps. (Workmen's compensation encouraged factory owners to adopt safer procedures so that they would not have to be faced with paying large sums to accident victims.) Negligence law was modified to provide greater assurance to injured workers that they would be reimbursed for medical expenses and wage losses. The concept of strict liability was reinstated in the area of job-related injuries.

Workmen's compensation was the first, and probably most sensational return to the idea of strict liability. Employers were seen by the courts as being strictly liable for accidents that took place on their premises. Since the end of World War II there have been mounting efforts to replace negligence with strict liability in other areas–i.e., product liability. In the area of automobile insurance, however, many are stressing just the opposite position. While negligence law is declared to be inadequate, it is suggested that the victim bear his own loss rather than hold anyone strictly liable.

There is a different relationship between causer and victim in the driving situation than in the work situation. It is one thing to hold strictly liable the owner of a factory, or even the manufacturer of a product, but in most automobile accidents it would be almost impossible to prove that General Motors, for example, was the principal cause of every collision–nor could the price of automobiles embody the cost of accidents occurring in them over the years.

In admitting that there is a significant difference between automobile accidents and those other accidents resulting from modern technology, this is not to say that the courts have not recognized the fact that the concept of negligence needed to be changed to meet the needs of the growing number of victims. Negligence may have been retained in this area, but that does not mean it has not undergone some changes.

Action by the Courts

A major change in the law of negligence as it applies to automobile accidents has been the introduction of the principle of *res ipsa loquitur*. This is a Latin phrase meaning that the action speaks for itself. The increasing use of this principle has made it easier for plaintiffs to win suits by in effect switching the burden of proof to the defendant. If the very nature of the accident indicates that the defendant was at fault, then the court will put the burden of proof on the defendant to show that he was not negligent.

The courts have also decided that violation of some provisions of the motor vehicle code, traffic provisions, or highway safety acts should be construed as being "negligence *per se*." In other words, a violation of certain laws automatically makes the violator negligent and thus responsible for his tort. This imposition of strict liability has been of great help to many potential plaintiffs.

Other areas in which the courts and legislatures have acted on behalf of the interests of plaintiffs are: (1) the abrogation of traditional common law immunities for charities and governments; (2) the increased use of the vicarious liability concept–i.e., looking to employers and others responsible for the use or even the manufacture of

the automobile for compensation; (3) the defense of assumption of risk has been restricted or eliminated as an independent defense; and (4) the defense of contributory negligence has been qualified by the doctrine of last clear chance or even converted into comparative negligence.

This is the current state of the tort liability law as it applies to automobile accidents. The negligence law of the nineteenth century, while not having been substantially changed in substance, has been procedurally altered in an attempt to reflect the value of an age in which automobile drivers have shown a propensity for colliding and thereby causing injury to their occupants.

THE CURRENT SYSTEM AND ITS PROBLEMS

As was noted earlier, the tort liability section of the law is only half of the "fault insurance system," and even this part has drawn criticism. However, when coupled with insurance, even the staunchest supporters of the current system of accident reparations see a need for modification.

One of the main problems with the fault insurance system appears to be the inherent conflict between the concept of liability based on fault and liability insurance:

> Fault law, in theory shifts accident costs to wrongdoers. Liability insurance in theory, protects wrongdoers both by defense and by indemnity. . . .Liability insurance has stripped fault law of its purpose, but society is left to pay for and endure all the complexities of fault law decision-making. The emergence of the third expectation about the fault insurance system–that it compensates victims–simply heightens the tension among the purposes of the fault insurance system.[11]

The result is a system that has been openly criticized on many grounds.

One of the chief criticisms is that the system provides no reparation at all for many accident victims. There are several reasons for this. First, to be reimbursed for damages, the plaintiff must prove that the defendant was negligent. A plaintiff who cannot prove negligence, for whatever reason, will not recover anything. The ability to prove negligence is dependent on so many unpredictable variables, such as geographic location, time lapsed since the accident, existence and qualifications of witnesses, quality of attorneys, and many more, that little consistency exists even among similar cases. Second, even if the plaintiff can prove negligence on the part of the defendant he will not recover anything if he was contributorily negligent in those states where comparative negligence has not been instituted. (Texas adopted comparative negligence effective in August, 1973.) He may also be restricted from recovery by guest statutes. (Texas has a modified guest statute in force, which restricts recovery only as to suits between certain family members.) Third, the plaintiff may be injured by someone who is financially irresponsible and who, therefore, cannot pay for the damages caused even though he is legally liable to pay for such damages.

Delay in the payment to accident victims is another problem of the current system. The 1970 U.S. Department of Transportation studies revealed that within 30 days after the occurrence of automobile accidents, on the average only 21 percent of paid claims had been settled. These settlements represented only 3.5 percent of the total payments made on all paid claims.[12] The studies further showed that 90-day delays are not unusual and frequently years pass before some claims are paid.[13]

Perhaps most significantly, the tort system is said to be the cause of inequitable overpayments and underpayments to accident victims. One study provides the example of a person with an actual loss of $250 who files a claim for $1,000 against the other driver and his insurer. This prospective plaintiff may well receive $1,000 in an out-of-court settlement because the cost of a $250 claim plus the cost of defending the claim in court would exceed $1,000.[14] Thus, the expense of litigation imposed by the tort system can cause an insurance company to agree out-of-court to pay the claimant an amount much higher than he or she deserves. On the other hand, when higher claims do, in fact, go to court, there is a tendency for these claims to be underpaid. Still another DOT study provided some documentation for this unusual dichotomy. The DOT statistics revealed that seriously injured victims with medical expenses of $5,000 or more recovered only 55 percent of their expenses from tort insurance while victims with medical expenses of less than $5,000 recovered an average of 90 percent of expenses.[15] There is, of course, much that can be questioned about these statistics (i.e., the validity of claimed medical expenditures). Likewise, there is some question as to the extensiveness of this underpayment/overpayment phenomenon throughout the 50 states. However, logic and documentation indicate that both can and do occur as a result of the uncertainties involved in court trials of automobile injury cases (see Chapter Five).

The finding of guilt involved in tort laws mandates that human injury, suffering, and degrees of guilt be translated into dollar and cents figures. State Farm Automobile Insurance Company officials assert that these requirements have "undoubtedly added costs to the reparation system."[16] The 1970 Department of Transportation study provides some quantification of this excessive cost. According to the DOT's figures, in automobile accident litigation the defendant's attorneys receive an average of $819 per case regardless of the verdict.[17] These costs are passed back through the automobile insurance system to the consumer.

Critics charge that the current system has a number of other flaws: (1) There is a tremendous inducement for dishonesty due, in no small measure, to the large amounts of money that are involved in some cases. (2) The system does not provide adequate money for rehabilitation. (3) It

fails in large degrees to deter negligent driving. (4) In reality, the system has very little to do with reparations because 97 percent of all claims are settled out-of-court. Thus, the concepts of negligence and fault are being handled in large measure by insurance companies, or at least in proceedings that have very little to do with the concepts of what is fair and right for society.[18]

A 1971 DOT publication said of the relationship between inflation in the rest of the economy and the inflated costs of automobile insurance:

> Perhaps the most pervasive influence upon automobile insurance as a public issue in recent years has been inflation. Indeed, between 1960 and 1970, the Consumer Price Index (CPI) for automobile insurance rose 63 percent, slightly more than twice as much as the CPI for all items. . . .This rise. . .was caused in large part by cost increases in the products and services which insurance pays for. . . .[19]

This drastic inflation of automobile insurance premiums is caused not only by increased labor costs and hospitalization and medical expenses, but, to a great degree by the rapidly increasing cost of automobile parts. State Farm has indicated that the greatest potential for cutting automobile insurance costs lies in the area of vehicle damage rather than bodily injury.[20] That company reports that, according to its studies, the cost of crash replacement parts (bumpers, fenders, etc.) rose 104.7 percent from mid-1963 to mid-1974 while Bureau of Labor Statistics studies show that the cost of new cars increased only 10 percent during that same period.[21] Statistics from the Insurance Information Institute bear this out. According to these figures, the costs of repairing frequently damaged parts on a standard size 4-door Chevrolet sedan, 1967 model, were $231.65 for parts, $90.60 for labor or a total of $322.25. On a comparable 1973 model, the costs were $494.11 for parts, $91.80 for labor, and $587.91 total.[22] Thus, during the six-year period, average labor costs for repairs increased 1.3 percent, "crash parts" cost increased 114 percent, and total repair cost increased 82.4 percent.[23] The effect of repair parts prices on overall repair cost and therefore on automobile insurance costs is obvious.

This problem is compounded in still another way. Insurers and state insurance departments must attempt to predict the future effects of this inflation in establishing automobile insurance rates. The 1971 DOT report discusses various ramifications of these prediction attempts:

> . . .The inflationary spiral has been the overriding reason for widespread and frequently severe underwriting losses of automobile insurers and, consequently, for the insurance price and availability problems that have followed in the wake of unprofitability. . . .Obviously, if the effects of inflation cannot be predicted with reasonable accuracy, then the rates may turn out to be disastrously inadequate.[24]

This same study explains the problematic chain of events set in motion when rates are determined to be inadequate:

> When an insurance company becomes convinced that the rates it is allowed to charge are inadequate to cover the expected losses of a specific group of its insureds, it understandably becomes more selective in accepting new applicants and attempts to drop those policyholders for whom the rates have become inadequate. As this attitude spreads to more insurers, increasing numbers of drivers find insurance unavailable in the voluntary market and are forced to seek coverage with assigned risk plans or the high risk (non-standard) market.[25]

Those able to purchase special high-risk policies are confronted with still more problems: "Over and above the high rate of insolvencies, policies written by high-risk insurers have been noted for coverage gaps, restrictive provisions, and arbitrary and capricious denials of liability."[26]

It is difficult to ignore or disprove many of the criticisms leveled against the present fault insurance system. Clearly there are drawbacks that need correction.
substantial drawbacks that need corrections.

Tort law has been used over the past two centuries as a basis for the settlement of damages caused when vehicles used for transportation have collided with something. The purposes of this law appear to have been to punish the wrongdoers, encourage the elimination of disorderly behavior, compensate the injured victims, and in general provide for the best interests of society. The law has changed over the years in order to concentrate on the last of these four criteria. However, the increased pace of modern technology and the development of liability insurance have made the adaptive process difficult for the law. In fact, if the current criticism of the way in which the fault insurance system works is any measure of how well adaptation to the needs of the time has been, then it can only be concluded that the fault insurance system has fallen short of this objective.

CRITERIA FOR REFORM: THE CHARACTERISTICS OF A GOOD AUTOMOBILE INSURANCE SYSTEM

While it appears that the fault insurance system has not functioned effectively, before changes can be suggested, the objectives or characteristics of a desirable system must be determined. When discussing the desirable features of any good or service, the natural tendency is to focus on each characteristic from the standpoint of the buyers and sellers of that good or service. In the case of automobile insurance, however, it is not so simple. Some consumers of automobile insurance–i.e., accident victims–are more directly affected by the system than are consumers who are not involved in an accident. This fact should not, however, be taken as an

indication that a good automobile insurance system should be structured with only the victim in mind. The frequency and severity of automobile accidents determine the overall costs of an automobile insurance system, and, in turn, affect the rates paid by all consumers of automobile insurance. In addition, the resources devoted to the rehabilitation of victims and settlement of claims have a definite impact upon society as a whole. Desirable characteristics of a good automobile insurance system, then, would include those features aimed at serving the interests of accident victims, insurance consumers, insurance sellers, and society as a whole.

Compensation to All Victims

The ultimate objective of an automobile insurance system should be the compensation of all victims for losses suffered in automobile accidents. The very reason people seek automobile insurance is to protect themselves from losses which could result from their involvement in an automobile accident. At the very least, an accident victim should receive some compensation for out-of-pocket losses. The insurance system, as a whole, should seek to provide adequate coverage to all consumers who need insurance; and in the event that a consumer becomes a victim, the system should at least seek to provide compensation for out-of-pocket, or economic losses.

Adequate and Just Compensation

An insurance system should seek not only to compensate all victims for their losses, but to compensate all victims adequately and justly. The interests of all involved parties (victims, consumers, sellers, and society) would be best served if this could be accomplished. As will be demonstrated later in this report, persons with small losses are often overcompensated while those with large losses are typically undercompensated. A good system would feature compensation levels which accurately reflect the actual losses sustained by victims of automobile accidents.

Quick Delivery of Benefits

From the standpoint of the victim, any system that begins to deliver benefits quickly can reduce human suffering and hardship, thereby facilitating the rehabilitation process. Prompt delivery of benefits is also in the best interest of consumers, sellers of insurance, and society as a whole.

Tardy payment of benefits which delays the rehabilitation process often necessitates longer, more sophisticated and more expensive treatment than would have been the case if rehabilitation could have started immediately. The overall monetary costs of the system are, as a result, greatly increased. The individual consumer is then forced to bear his individual share of the increased burden in the form of higher premiums.

Delayed payment of benefits usually implies problems in the adjustment and settlement of claims. Sellers of insurance are therefore forced to devote more resources to the adjustment and settlement. A system of insurance which would encourage and facilitate prompt payment would allow great savings for sellers as well as buyers.

Increased settlement, litigation, and adjustment costs have ramifications for all of society. Devotion of excessive institutional and manpower resources to the claims settlement process, which could be avoided by a system which induces prompt payments, forces society to forego the goods and services that could have been produced by those resources if they were otherwise employed.

Economic Efficiency

The desire for maximum efficiency in the delivery of benefits is of utmost importance in any automobile insurance system. The most benefits for the least cost is the objective.

Cost is a relative term, however. One may speak of cost in relation to income, for example, or to budget, to past costs, or to benefits. Many people would like to reduce their automobile insurance premiums because they are high compared to their current household budgets and compared to past costs. While these are important considerations, an even more important question is whether insured persons are getting "their money's worth"—that is, are the premiums low relative to the benefits provided?

The system is efficient if it returns to the accident victims as much as possible of the money that is paid into it in the forms of premiums. In so doing, the system will cut out unnecessary wastes while giving increased benefits to victims and decreased costs to consumers. System costs are minimized, then, any time benefits increase faster than costs or decrease slower than costs.

Correlation With Other Insurance

A good automobile insurance system must provide a means of correlation between the payment of benefits by automobile insurance and the payment of benefits from collateral sources of insurance. Duplicative coverage and double payment lead to increased costs within the system.

Duplicative coverage has both advantages and disadvantages. Double coverage does, of course, lend more security to the insured as it greatly increases the probability of receiving some compensation should an accident occur. On the other hand, a system which allows for double coverage can cause needless consumer expense. Quite often the consumer either out of carelessness or a misunderstanding of the exact terms of his coverage buys more insurance than is needed. Such purchases not only represent inefficient

consumption, but also give rise to double payment within the system.

Double payment often allows the accident victim to profit from his losses. Although it is arguable that since the beneficiary of double payment has paid two premiums he should receive both payments, the fact is that since claims under both policies are increased, all of the insureds under both policies end up paying higher premiums.

Availability of Reliable Coverage

Naturally, the consumer is interested in purchasing reliable and stable policy coverage. A good system must allow the insured to rely on both the availability and quality of benefits coverage. Availability is an especially important problem when insurance is compulsory. It is crucial that coverage be available to all drivers and at a price that is affordable. No system will work without a high percentage of participation among drivers. The system must also insure stability of the policy itself. Cancellation should be allowed only when there exists an extremely justifiable cause.

Public Understanding

Both consumer and provider understanding of the terms of coverage and the workings of the system are important. If the system is complicated and generally misunderstood, it will not be generally acceptable. It will likely result in increased fraud, increased settlement costs both in and out of court, and ultimately higher rates combined with a readiness to change the system.

Where there is confusion, there is generally ample room for undesirable dealings on the part of insurers and insureds alike, leading to a general state of mistrust. Insureds will often not have the coverage they thought they had, and agents will often be hard pressed to give them good advice. A shrinking of the voluntary insurance market could result, forcing more drivers into the assigned risk plan. Litigation could be increased, as the courts are left with the task of interpreting a confusing law.

If the system is relatively simple and easily understood, it stands a greater chance of acceptance by consumers and providers alike. Of course, such acceptance will depend ultimately on the makeup of the system.

Emphasis on Prevention and Rehabilitation

The final desirable characteristics of a good insurance system is that it encourages the prevention of accidents and rehabilitation of victims. Great significance should be assigned to the need for safer automobiles and highways, as well as better education for drivers of vehicles. In addition, rehabilitation should be a primary goal of the system in the event that an accident does occur. The rehabilitation process should at all times take precedence over the adversary process in which one party seeks to minimize its loss, while the other party seeks to maximize its gain. The encouragement of accident prevention and victim rehabilitation, aside from its humanitarian motives, will also bring about lower accident costs and, in the long run, lower insurance premiums.

Summary

Though the aforementioned characteristics may not represent an exhaustive listing, they do serve as a suitable basis upon which to judge the quality of an automobile insurance system. In the event that it is deemed necessary to change an existing automobile insurance system, these characteristics should definitely be included as important criteria for reform. It will likely not be possible to achieve each of these goals to its fullest degree in any one system. Consequently, tradeoffs must be considered so that a balance is achieved which is workable and generally acceptable. The remainder of this study will be presented with these criteria in mind.

FOOTNOTES

[1]Nathan Isaacs, "Fault and Liability," 31 *Harvard Law Review* 951 (1918).

[2]James Fleming, "The Origin and Development of Negligence Action," in *The Origin and Development of Negligence Action*, a U.S. Department of Transportation Study (Washington, D.C., 1970), p. 37.

[3]*Ibid.*, p. 41.

[4]William Prosser, *Torts: Cases and Materials*, Foundation Press, (New York, 1971), p. 2.

[5]*Ibid.*

[6]Wex Malone, "Ruminations on the Role of Fault in the History of Torts," in *The Origin and Development of Negligence Action*, a U.S. Department of Transportation Study, (Washington, D.C., 1970), p. 15.

[7]Prosser, p. 3.

[8]Leon Green, *Traffic Victims: Tort Law and Insurance*, Northwestern University Press, (Evanston, Ill., 1958), p. 11.

[9]*Ibid.*

[10]*Ibid.*, pp. 11-12.

[11]State of New York Insurance Department, *Automo-*

bile Insurance. . .for Whose Benefit. A report to Governor Nelson A. Rockefeller. (Albany, N.Y., 1970), pp. 13-14.

[12]U.S. Department of Transportation, *Personal Injury Claims*, (Washington, D.C., 1970), p. 84.

[13]*Ibid*.

[14]U.S. Department of Transportation, *Automobile Accident Litigation*, (Washington, D.C., 1970), p. 7.

[15]U.S. Department of Transportation, *Economic Consequences of Automobile Accident Injuries*, (Washington, D.C., 1970), p. 28.

[16]State Farm Insurance Company, *No-Fault Press Reference Manual*, (Bloomington, Ill., 1973), p. G-103.

[17]U.S. Department of Transportation, *Automobile Accident Litigation*, p. 7.

[18]Prosser, pp. 622-626.

[19]U.S. Department of Transportation, *Motor Vehicle Crash Losses and Their Compensation in the United States*, (Washington, D.C., 1971), p. 61.

[20]State Farm Insurance Company, p. G-403.

[21]*Ibid*., p. G-403.

[22]Insurance Information Institute, *Insurance Facts 1973*. (New York, N.Y., 1973), p. 49.

[23]*Ibid*, p. 50.

[24]U.S. Department of Transportation, *Motor Vehicle Crash Losses and Their Compensation in the United States*, pp. 63-64.

[25]*Ibid*., p. 65.

[26]*Ibid*., p. 67.

CHAPTER II

THE THEORY OF A NO-FAULT AUTOMOBILE INSURANCE SYSTEM

The term "no-fault automobile insurance" has many different meanings for different individuals. An acknowledged authority states that "the fundamental basis for a no-fault system is the abolishment of tort liability in automobile accidents, with each driver or owner accepting responsibility for some or all losses sustained by pedestrians and by occupants of his own vehicle in return for which he would enjoy immunity from liability for those losses."[1] Simply stated, a true no-fault automobile insurance system pays basic benefits for out-of-pocket losses directly to the insured, regardless of fault, while limiting, at least partially, his right to sue for those losses. This limitation on lawsuits may be total in a "pure" no-fault system, or partial in a "modified" no-fault system.

The problems with the tort liability system discussed in the preceeding chapter have led to calls for reform in the automobile insurance reparations system. Out of those calls has emerged the no-fault movement. Presently, 14 states have no-fault laws which both pay benefits without regard to fault and limit the right to sue. Eight other states have adopted laws establishing systems which, though not limiting the right to sue, do pay wage and medical benefits on a first party basis (the "first party" to an insurance contract is the insured himself; a third party would be someone to whom payments were made on behalf of the insured, i.e., because of his liability to such "third party").[2] Events in some of these states have combined with increasing change in public attitude toward the automobile insurance system and increased attention at the federal level to support an opinion expressed by Professor Robert E. Keeton: "No-fault automobile insurance is definitely coming."[3] How did the no-fault concept move into the limelight? What are the features which make it either desirable or undesirable? This chapter will examine the history of the no-fault automobile insurance "movement", the various proposals that have emerged, and the specific problem areas in an attempt to determine if the advent of no-fault is indeed inevitable and/or desirable.

THE HISTORY OF NO-FAULT AUTOMOBILE INSURANCE

The no-fault concept in automobile accident reparations was born of the same philosophy which prompted the passage of workmen's compensation laws in the United States.[4] As early as 1919 advocates stated the desire, as in workmen's compensation, to change the system from one based on lawsuits against a negligent third party to one based on first-party compensation of an accident victim by the victim's insurer. These ideas were expressed by such scholars as Rollins and Carman in 1919, and in 1920 by Judge Robert Marx.[5]

In 1932, the Columbia University Committee to Study Compensation for Automobile Accidents developed what has been cited as the most important early proposal on no-fault automobile insurance.[6] Under the plan, coverage was to be compulsory, liability limited, and benefits paid for out-of-pocket losses similar to workmen's compensation. Payment would be made without regard to fault and recovery for pain and suffering would not be permitted. The plan did, however, omit recovery for victims in single vehicle accidents, and victims of non-resident, hit-and-run, and uninsured drivers. The Committee made available model legislation which would provide for implementation of the plan.

The Columbia University Plan remained purely academic until a 1944 political victory by the Cooperative Commonwealth Federation in the Canadian province of Saskatchewan led to the adoption in 1946 of the first no-fault automobile insurance in North America.[7] The Cooperative Commonwealth Federation, composed of farm and labor leaders, used the Columbia Plan as a guideline in developing their "Automobile Accident Insurance Act" which was not designed to produce "absolute justice" for individual victims, but rather to produce "average justice" for all motorists.[8]

Under the Saskatchewan plan, a schedule of benefits are paid to all accident victims regardless of fault, with compensation being denied only in those cases where the automobile is driven in breach of conditions specified by the law. Liability for fault is retained for claims in excess of basic coverage, and extension policies providing liability coverage are available. The Canadian legal system does not, however, recognize the contingent fee system; consequently, individuals seeking services of attorneys must pay whether they win or lose. In some cases, the court may

order the loser to pay a specified fee for the winner's attorney. Despite this fact, there is some reluctance to pursue liability claims. The plan is compulsory and the province has been quite successful in enforcing that requirement. Payment of the premium is required at the time automobile owners obtain a license or register their vehicles.[9]

Following the Saskatchewan plan, the 1950s and early 1960s produced such proposals as the Collins Plan, which was considered by the California Legislature, Professor Albert Ehrenzweig's "Full Aid Plan," and Professor Leon Green's "Compulsory Motor Vehicle Comprehensive Loss Insurance Plan." Despite these plans, the no-fault concept in the United States remained, for the most part, an academic topic.[10] In 1965, however, the concept experienced a "breakthrough" in the writings of two law professors, Robert Keeton and Jeffrey O'Connell. Their "Basic Protection Plan" led to belief among interested parties that some states might actually adopt a no-fault system. Why, after almost 50 years, was the no-fault concept finally taken seriously? The answer lies partly in the conditions which prevailed in society at the time and partly in the "Basic Protection Plan" itself.

In the 1960s pressures and criticisms of the tort liability system began to mount from both within and outside of the insurance industry. The number of automobiles on the road approached 100 million and the number of accidents approached 10 million.[11] Costs of medical care and automobile repairs skyrocketed. Log-jams developed in the court systems and insurance became more difficult to secure, as well as more expensive, for increasing numbers of drivers.[12] In addition, public concern had shifted significantly from a preoccupation with punishing the wrongdoer to a concern for the injured accident victims regardless of fault. These attitudes of society combined well with some very practical aspects of the Keeton-O'Connell work. First of all, their plan was easily readable and understandable. Secondly, it provided a ready-made statute for adoption by legislatures. Finally, it incorporated these apparent shifts in the attitude of society into the plan itself.[13] Thus, the no-fault concept became of interest to policymakers and the public at large.

Under the "Basic Protection Plan" the insured, passengers, and pedestrians would be compensated by the insured's policy unless the person intentionally injured himself, and coverage was not provided for persons in other automobiles. The plan would be compulsory and would provide legal liability exemptions unless pain and suffering damages exceed $5,000, or other damages exceed $10,000. Payment would be made as expenses occur. The original plan covered only bodily injury; however, it has since been revised to include property damage.

In 1967, Daniel P. Moynihan, the chairman of the federal advisory committee on traffic safety research for the Johnson Administration, created a further stir when he challenged the bar and insurance companies to reform or get out of the "traffic accident business" and let the government take over. Moynihan suggested the establishment of a national system of automobile accident compensation plan for federal employees. He advocated financing the plan with interstate highway funds or an increase in the gasoline tax.[14]

In 1968 there were three significant developments in the no-fault movement. Puerto Rico became the first U.S. jurisdiction to adopt a modified no-fault law. The Puerto Rico law, which became effective in 1970, features the payments of benefits without regard to fault, including medical payments, income replacement, dismemberment, death, and funeral benefits. The plan is both compulsory and government-administered so all persons are automatically covered and protected. As in the Saskatchewan plan, emphasis is placed on socially adequate benefits rather than individual equity. The plan is financed by tax revenues. Tort liability suits are allowed above certain thresholds.[15]

A second important event of 1968 occurred in October, when after 18 months of study, the American Insurance Association announced its "Complete Personal Protection Automobile Insurance Plan." In this plan, the AIA advocated a pure no-fault system which would include:

- elimination of all reference to fault or third-party liability except in cases involving out-of-state drivers from states with conflicting laws;
- substitution of unlimited first party compensation for economic loss and medical and rehabilitation expenses;
- elimination of all payment for pain and suffering.

The AIA stated that its plan would not only provide quicker and more adequate compensation, but would substantially reduce administrative and legal costs, therefore leading to a reduction in rates paid by consumers.[16]

The third significant development of 1968 was the enactment of a law by Congress directing the Department of Transportation to conduct a $2 million, two-year study of the automobile insurance system in the United States. The results of the DOT study were to have been ready by May, 1970, but the report was not presented to Congress until March, 1971. The report pointed to the inequities and problems in the tort liability system and recommended that Congress adopt a resolution encouraging the states to evolve a "rational, equitable and compatible reparations system." Then, Secretary of Transportation John A. Volpe called on the states to promptly begin to shift to first-party, no-fault compensation systems.[17] The findings of the DOT study will be discussed later in this report.

The year 1970 was no less important in the no-fault movement. During that year, Massachusetts became the first state to adopt a modified no-fault law. The plan called for compulsory no-fault coverage for bodily injury up to a

specified limit. The right to sue for tort liability was retained in cases of serious injury or after medical expenses exceeded a $500 threshold.[18] The Massachusetts Plan will be included in a later discussion of the various no-fault plans.

Also in 1970, interest in establishing minimum federal standards to be met by the automobile insurance systems of all states began to mount in Washington. Senator Philip A. Hart introduced a series of bills aimed at remodeling the automobile insurance reparations system in the United States. The key bill in his proposals was the Uniform Motor Vehicle Insurance Act. The bill was modified and later reintroduced in 1971 as S.945 which failed to pass.

The year 1971 was characterized by much action on the part of the states. Twenty-eight state legislatures debated some form of no-fault bill with Delaware, Florida, and Illinois approving bills. (The Illinois law was later declared unconstitutional because of a provision in that particular state's constitution.) President Nixon, also in 1970, encouraged the states to act on their own in providing for insurance reform.

The U.S. Supreme Court in 1971 rendered a decision which has been interpreted as adding fuel to the no-fault fire. On May 24, 1971, the Court struck down the provisions of the Georgia financial responsibility law which allowed for revocation of the license of an uninsured motorist involved in an accident regardless of the fault status. The Court ruled that before an uninsured motorist's license could be revoked a hearing must be held at which it must be proven that the uninsured motorist would be held liable for damages under the tort system. The ruling provided consistency to the fact that under tort liability only a motorist that negligently causes injuries is punishable by being held liable. This ruling forced 37 states to reconsider their financial responsibility laws.[19]

The year 1972 saw increasing action in the no-fault field. Senators Hart and Magnuson continued their pressures in Congress with S.945. At least 32 state legislatures considered no-fault laws with five of them—Virginia, Connecticut, Maryland, New Jersey, and Michigan—passing some type of no-fault bill. Virginia and Maryland did not restrict tort liability. The Michigan bill, however, became one of the most far-reaching no-fault laws in existence. The law provides for unlimited first-party medical coverage and extensive loss of income coverage while restricting tort liability actions. The main problem with the law centers around the vagueness of its tort liability restriction.[20]

In addition to these state actions, a variety of other plans surfaced, including the "Guaranteed Protection Plan" advanced by the American Mutual Insurance Alliance, and the "Dual Protection Plan" of the National Association of Independent Insurers. Also in 1972, the National Conference on Uniform State Laws drafted a Uniform Motor Vehicle Accident Reparations Act (UMVARA) as a standard to be followed by state legislators in drafting no-fault legislation. UMVARA has received significant attention on both the state and federal levels. UMVARA provides medical benefits without any limit, except that hospital room payments would not exceed the semi-private rate. It provides up to $200 a week in work loss benefits and survivors' benefits for an unlimited amount of time. Unlimited benefits are provided for replacement services. Funeral expenses up to $500 are covered.[21]

Renewed action on the federal front came in 1973 as Senators Hart and Magnuson consolidated both their earlier bills and UMVARA into the formulation of S.354, the Federal No-Fault Automobile Insurance Act. The bill was referred to the Senate Commerce Committee where it was approved. The bill was then sent to the Senate Judiciary Committee where it was approved by a one-vote margin. However, the legislation did not receive final approval prior to the adjournment of the 93rd Congress in 1974.

TYPES OF NO-FAULT LAWS

Many different types of plans are called no-fault insurance. Some are called no-fault plans before some audiences, yet are proposed by groups definitely against no-fault insurance. The main distinction among the various proposed and effective no-fault plans is in the provisions limiting the right to sue.

The concept of first-party no-fault insurance is not new. In fact, most of the typical driver's current automobile insurance premium goes for "no-fault" coverages—that is, coverages which reimburse the insured directly, regardless of fault. Collision, comprehensive physical damage, and medical payments coverages all fall in this category. The introduction of Personal Injury Protection (PIP) coverage primarily adds wages to the list of damages which an insured can recover directly from his insurer on a first-party basis without regard to fault.

The original concept of no-fault automobile insurance contemplated more than merely extending first-party coverages. It contemplated a restriction in the right to sue, thus forcing the insured to rely on his first-party coverages. The amount of restriction varies greatly among the different state and federal plans, however.

Restrictions on tort liability are most severe under the Hart-Magnuson Bill which would bar them completely; in Michigan, where they are barred except in cases of death or serious injury; and in Hawaii, where they are barred except in cases of death, serious injury, or when maximum first-party benefits are exceeded. The other plans have less severe restrictions. In several states, including Texas, there are no restrictions on the right to sue. Another major difference among no-fault plans is in the degree of compulsion required in each law. The modified no-fault plans, as well as the Delaware, Oregon, and Maryland plans

TABLE II-1

TABLE OF STATE "NO-FAULT" LAWS

State	No-Fault Benefits	Limitation on General Damages	Vehicle Damage	Effective Date
Massachusetts	$2,000 in benefits for medical, funeral, wage loss, and substitute service expenses. Wage loss and substitute service benefits are limited to 75% of actual loss.	Can recover only if medical costs exceed $500, or in case of death, loss of all or part of body member, permanent and serious disfigurement, loss of sight or hearing, or a fracture.	Tort liability abolished.	Jan. 1, 1971
Delaware	$10,000 per person and $20,000 per accident. Covers medical costs, loss of income, loss of services, and funeral expenses (limited to $2,000).	None. But amount of no-fault benefits received can't be used as evidence in suits for general damages.	Stays under tort system.	Jan. 1, 1972.
Florida	$5,000 per person for medical costs, wage loss, replacement services, and funeral expense (limited to $1,000).	Cannot recover unless medical costs exceed $1,000 or injury results in permanent disfigurement, permanent injury, loss of body member or function, or death.	Stays under tort system.	Jan. 1, 1972.
Oregon	$5,000 medical benefits. 70% of wage loss up to $750 month. $18 a day substitute services. Wage loss and substitute services paid from first day if disability lasts 14 days; are limited to 52 weeks.	None.	Stays under tort system.	Jan. 1, 1972. Jan. 1, 1974, for benefits at left.
South Dakota	Purchase is optional. $2,000 in medical expense. $60 week for wage loss, starting 14 days after injury, for up to 52 weeks. $10,000 death benefit.	None.	Stays under tort system.	Jan. 1, 1972.

State	No-Fault Benefits	Limitation on General Damages	Vehicle Damage	Effective Date
Virginia	Purchase is optional. $2,000 for medical and funeral costs. $100 week for wage loss with limit of 52 weeks.	None.	Stays under tort system.	July 1, 1972.
Connecticut	$5,000 benefits for medical, hospital, funeral (limit $2,000), lost wages, survivors' loss, and substitute service expenses. Wage loss, substitute service, and survivors' benefits limited to 85% of actual loss.	Cannot recover unless economic loss exceeds $400, or there is permanent injury, bone fracture, disfigurement, dismemberment, or death.	Stays under tort system.	Jan. 1, 1973.
Maryland	$2,500 in benefits for medical, hospital, funeral, wage loss, and substitute service expenses.	None.	Stays under tort system.	Jan. 1, 1973.
New Jersey	Unlimited benefits for medical and hospital costs. Wage loss up to $100 a week for one year. Substitute services up to $12 a day up to $4,380 per person. Funeral expenses to $1,000. Survivors' benefits equal to amount victim would have received if he had not died.	Cannot recover if injuries are confined to soft tissue and medical expenses excluding hospital costs are less than $200.	Stays under tort system.	Jan. 1, 1973.
Michigan	Unlimited medical and hospital benefits. Funeral benefits up to $1,000. Lost wages up to $1,000 per month and substitute services of $20 a day payable to victim or survivor.	Cannot recover unless injuries result in death, serious impairment of body function, or permanent serious disfigurement.	Tort liability abolished.	Oct. 1, 1973.
New York	Aggregate limit of $50,000 for medical, wage loss, and substitute service benefits. Wage loss limited to 80% of actual loss up to $1,000 per month for three years. Substitute service benefits limited to $25 a day for one year.	Cannot recover unless medical expenses exceed $500, or injury results in death, dismemberment, significant disfigurement, a compound or comminuted fracture, or permanent loss of use of a body organ, member, function, or system.	Stays under tort system.	Feb. 1, 1974.

State	No-Fault Benefits	Limitation on General Damages	Vehicle Damage	Effective Date
Arkansas	Purchase is optional. $2,000 per person for medical and hospital expenses. Wage loss: 70% of lost wages up to $140 a week, beginning 8 days after accident, for up to 52 weeks. Essential services: up to $70 a week for up to 52 weeks, subject to 8-day waiting period. Death benefit: $5,000.	None.	Stays under tort system.	July 1, 1974.
Utah	$2,000 per person for medical and hospital expenses. 85% of gross income loss, up to $150 a week, for up to 52 weeks. $12 a day for loss of services for up to 365 days. Both wage loss and service loss coverages subject to 3-day waiting periods that disappear if disability lasts longer than two weeks. $1,000 funeral benefit. $2,000 survivor's benefit.	Cannot recover unless medical expenses exceed $500, or injury results in dismemberment or fracture, permanent disfigurement, permanent disability, or death.	Stays under tory system.	Jan. 1, 1974.
Kansas	$2,000 per person for medical expenses. Wage loss: up to $650 a month for one year. $2,000 for rehabilitation costs. Substitute service benefits of $12 a day for 365 days. Survivor's benefits: Up to $650 a month for lost income, $12 a day for substitution benefits, for not over one year after death, minus any disability benefits victim received before death. Funeral benefit: $1,000.	Cannot recover unless medical costs exceed $500, or injury results in permanent disfigurement, fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury, permanent loss of a body function, or death.	Stays under tort system.	Jan. 1, 1974.
Texas	$2,500 per person overall limit. Covers medical and funeral expenses, lost income, and loss of services. Purchase optional.	None.	Stays under tort system.	90 days after adjournment of 1973 regular session.

State	No-Fault Benefits	Limitation on General Damages	Vehicle Damage	Effective Date
Nevada	Aggregate limit of $10,000. Pays for medical and rehabilitation expenses; up to $175 a week for loss of income; up to $18 a day for 104 weeks for replacement services; survivor's benefits of not less than $5,000 and not more than victim would have gotten in disability benefits for 1 year; and $1,000 for death.	Cannot recover unless medical benefits exceed $750 or injury causes chronic or permanent injury, permanent partial or permanent total disability, disfigurement, more than 180 days of inability to work at occupation, fracture of a major bone, dismemberment, permanent loss of a body function, or death.	Stays under tort system.	Feb. 1, 1974.
Colorado	$25,000 for medical expenses. $25,000 for rehabilitation. Lost income: up to $125 a week for up to 52 weeks. Services: up to $15 a day for up to 52 weeks. Death benefit: $1,000.	Cannot recover unless medical and rehabilitation services have reasonable value of more than $500, or injury causes permanent disfigurement, permanent disability, dismemberment, loss of earnings for more than 52 weeks, or death.	Stays under tort system.	April 1, 1974.
Hawaii	Aggregate limit of $15,000. Pays for medical and hospital services; rehabilitation; occupational, psychiatric, and physical therapy; up to $800 monthly for income loss, substitute services and survivors' loss; and up to $1,500 for funeral expenses.	Cannot recover from 9-1-74, to 8-31-75, unless medical and rehabilitation expenses exceed $1,500. Thereafter, must exceed a floating threshold established annually by the insurance commissioner. Can also recover if injury results in death; significant, permanent loss of use of body part or function; or permanent and serious disfigurement that subjects injured person to mental or emotional suffering.	Stays under tort system.	Sept. 1, 1974.
Georgia	Aggregate limit of $5,000. Up to $2,500 for medical costs. 85% of lost income with maximum $200 week. $20 day for necessary services. Survivors' benefits same as lost income benefits had victim lived. $1,500 funeral benefit.	Cannot recover unless medical costs exceed $500, disability lasts 10 days, or injury results in death, fractured bone, permanent disfigurement, dismemberment, permanent loss of body function, permanent, partial or total loss of sight or hearing.	Stays under tort system.	Mar. 1, 1975.

State	No-Fault Benefits	Limitation on General Damages	Vehicle Damage	Effective Date
Kentucky	Aggregate limit of $10,000. Covers medical expense; funeral expense up to $1,000; income loss up to $200 weekly, with as much as 15% deducted for income tax savings; up to $200 a week each for replacement services loss, survivors economic loss, and survivors replacement services loss. Motorist has right to reject no-fault.	Cannot recover unless medical expenses exceed $1,000, or injury results in permanent disfigurement; fracture of weight-bearing bone; a compound, comminuted, displaced or compressed fracture; loss of a body member; permanent injury; permanent loss of a body function; or death. But limitation does not apply to those who reject no-fault system or to those injured by driver who has rejected it.	Stays under tort system.	July 1, 1975.
Minnesota	$20,000 for medical expense. $10,000 for other benefits, including 85% of lost income up to $200 weekly; $15 a day for replacement services, with 7-day waiting period; up to $200 weekly in survivors' economic loss benefits; up to $200 weekly for survivors' replacement service loss; and $1,250 for funeral benefits.	Cannot recover unless medical expenses (not including x-rays and rehabilitation) exceed $2,000; or disability exceeds 60 days; or the injury results in permanent disfigurement; permanent injury; or death.	Stays under tort system.	Jan. 1, 1975.
South Carolina	Aggregate limit of $1,000. Covers medical and funeral costs, loss of earnings, and loss of essential services.	None.	Stays under tort system.	Oct. 1, 1974.

State	No-Fault Benefits	Limitation on General Damages	Vehicle Damage	Effective Date
Pennsylvania	Unlimited medical and rehabilitation benefits. Up to $15,000 for income loss, with monthly maximum determined by relationship of state's per capita income to nation's per capita income. Up to $25 daily for one year for replacement services. Up to $5,000 for survivors loss. Up to $1,500 for funeral costs.	Cannot recover unless accident results in more than $750 worth of medical and dental services (excluding diagnostic X-ray and rehabilitation costs above $100); more than 60 days continuous disability; permanent, severe, cosmetic disfigurement; serious and permanent injury; or death.	Stays under tort system.	July 19, 1975.

Source: State Farm *No-Fault Press Reference Manual.* Published by the Public Relations Department of the State Farm Insurance Companies. (Bloomington, Illinois, August 19, 1974.)

provide for compulsory first-party coverage. The Minnesota, South Dakota, Virginia, and Arkansas plans allow for optional first-party coverage. The Texas law provides for a mandatory offering by insurers, but with optional rejection in writing by the insured.

The amount of first-party benefits also varies widely among the many plans. The proposed National No-Fault Bill (Hart-Magnuson) and UMVARA, as well as the plans in effect in Colorado, Michigan, New Jersey, and New York, provide the most generous first-party coverages with payments provided up to $50,000 in Colorado and New York, and unlimited medical and rehabilitation expenses in the others.

The final difference concerns coverage for vehicle damage. All the states except Massachusetts and Michigan retain vehicle damage under the tort liability system.

The following table gives details on the plans in effect in the various states as of August, 1974.

LIMITING THE RIGHT TO SUE

Placing limits on the right to file lawsuits for damages incurred in automobile accidents is probably the most essential component of a no-fault insurance system, the component from which the title "no-fault" is derived and the component which allegedly permits reductions in automobile insurance premiums. Debate has focused almost exclusively on the right to sue for bodily injuries as opposed to property damage, probably because the actual size of bodily injury claims is considerably greater, as is the potential for exaggeration, fraud, and higher attorney fees. Also, property damage has already been covered on a no-fault basis (i.e., collision and comprehensive physical damage coverage) for years. Of the states that have enacted some form of compulsory no-fault automobile insurance, most have restricted lawsuits for bodily injuries while only two have successfully restricted lawsuits for property damage. (The courts have declared such restrictions unconstitutional in more than one other state.)

In acknowledgement of these practical considerations, the primary focus of this section will be on the limitation of law suits for bodily injuries under no-fault automobile insurance. Specifically, the following factors will be considered:

- increases in bodily injury costs that have brought about increased demand for a change in the insurance system;
- the effect of the tort liability system on personal injuries claims costs;
- thresholds set on bodily injury payments in various no-fault proposals.

Increased Bodily Injury Costs

Total bodily injury costs in motor vehicle accidents have

increased significantly over the past decade. In 1963, the average dollars paid per claim for bodily injuries under liability automobile insurance for private passenger vehicles in the United States was $1,113, while in 1972 this same cost in states which continued to have liability coverage for bodily injuries had risen to $1,938.[22] This was a cumulative increase of approximately 74 percent or about twice the cumulative overall inflation rate for the same period.

Roughly, this cost (bodily injury paid claims) was comprised of about 75 percent *wage loss* and 25 percent *medical expenses*.[23] The dramatic increase in the size of paid bodily injury claims is easy to understand when the relative increases in United States medical costs and wages over the same time period are analyzed. From 1967 to 1972, total medical care costs in the U.S. increased 32.5 percent, again well above the overall inflation rate for the period.[24] As subcomponents of this overall medical care cost increase, physicians' fees increased 33.8 percent while daily hospital charges shot up 73.9 percent.[25] Wages also showed a significant increase. From 1967 to 1971, average weekly earnings for all U.S. workers increased by 21.1 percent.[26] These increases of the components of actual paid bodily injury claims help explain, to a large degree, the overall increase in bodily injury claims cost.

The Effect of the Tort Liability System

A second set of factors causing increases in paid claims costs for bodily injuries exists in the tort system itself: the costs of lawsuits, and the threat of lawsuits in settling bodily injuries claims. One study reveals that as much as 16 cents of each premium dollar goes to pay lawyers as compared to 42 cents returned in benefits.[27]

The role that lawsuits play in bodily injury claims is demonstrated by a 1970 Department of Transportation study. At that time, according to the study, nearly 41 percent of all death and permanent injury claims in the United States actually went to suit while another 31 percent had attorney representation but did not result in actual lawsuits.[28] Comparable figures for all other personal injury claims resulting from automobile accidents were 15 percent and 29 percent.[29] It is evident from these statistics that while actual lawsuits occurred in only a minority of personal injury claims, the reliance on attorneys was significant, ranging from 72 percent of the claims for most serious injuries to 44 percent for all other personal injury claims. Texans' reliance on attorneys is not extensive. While 46.2 percent of paid claimants in all states included in the DOT study were represented by attorneys, only 28.9 percent of Texas claimants were so represented.[30] Nevertheless, it is still reasonable to assume that out-of-court settlements resulting from threatened lawsuits as well as actual lawsuits play a significant role in personal injury claim settlement.

The DOT study revealed further that smaller economic losses, probably due to their greater frequency, provided the vast majority of legal clients and lawsuits in automobile personal injury cases. Eight-two percent of lawyers' clients accounted for 73.3 percent of the successful lawsuits and 42 percent of plaintiff attorneys fees.[31] It is also pointed out that elimination of these cases would have an even greater impact on defense counsel than plaintiffs' counsel because defense counsel fees tend to be spread more evenly over all lawsuits.[32]

If the figure involved is increased to $2,500, then fully 93.7 percent of lawyers' clients are included, accounting for 89.5 percent of the lawsuits and 67.4 percent of plaintiff attorneys fees.[33]

While actual legal costs can be expressed as a percentage of premium, it is difficult to estimate the effect of threatened litigation on total claims cost and thus premiums on the same basis. One automobile insurance company summarizes by stating that this litigation (and threat thereof) have "undoubtedly added costs to the . . .system."[34] In addition to whatever legal defense fees may accrue (according to one source, an average of $819 per case, regardless of verdict[35]) the resulting overpayment of smaller claims probably compounds total system cost. Still another DOT report cites". . .the threat of suit in minor personal injury cases" as "the basic reason for the 'overpayment' of small claims."[36] Actual overpayment of small claims is difficult to ascertain since the "overpayment" is made in response to an "overclaim" by the individual involved. However, the DOT studies showed that in those cases where the actual out-of-pocket or economic losses (not including pain and suffering) were less than $500, claimants on the average received four-and-a-half times such economic losses.[37]

On the other hand, large losses are often underpaid. In 1971, claimants with expenses of $5,000 or more recovered an average of only 55 percent of their expenses from automobile liability insurance.[38] These large claim cases represent only a small percentage of total claims, however, and the net underpayment in these cases probably does not represent a significant savings to the system.

Thresholds

No-fault automobile insurance is, in part, an attempt to limit the cost involved with bodily injury claims to the actual economic losses incurred by the injured party. In order to accomplish this, the right of lawsuit is curtailed in varying degrees according to different no-fault proposals. This restriction of compensation to "out-of-pocket" expenses only normally excludes payments for "pain and suffering" or intangible physical losses because, by their very nature, these losses are not readily translated to actual dollar amounts. Under the liability insurance system,

general damages (including reimbursement for pain and suffering, mental anguish, etc.) are normally compensated only through resort to lawsuit or threat of suit. The DOT in its 1971 no-fault proposal suggested a modification to total restriction on lawsuits, a modification which has been generally incorporated into existing no-fault programs:

> The existing right to sue for damages resulting from negligence in car crashes might be continued for intangible losses, and if so could be subject to one limitation: no person should recover for intangible losses unless he establishes that he suffered permanent impairment or loss of function or permanent disfigurement, or that he incurred personal medical expenses (excluding hospital expenses) as a result of the accident in excess of a rather high dollar threshold. [39]

It is a question of the amount of the dollar threshold that causes considerable variation among no-fault plans. Numerous trial lawyers argue that any threshold is unconstitutional since it denies "equal protection" to automobile accident victims by restricting their right to sue while not similarly restricting the right to sue of victims of other types of accidents.[40] In addition to this very real legal problem, trial lawyers have generated several charges against restricting lawsuits such as ". . .closing the courthouse door in the face of the innocent victim in an automobile accident and prohibiting him from looking beyond his own insurance that he bought and paid for himself to recover total damages for all his injuries from the guilty offender. . . ."[41] Further it is suggested that no-fault may well create more lawsuits than it eliminates by generating litigation between insured individuals and their insurance companies.[42] A final possibility is that those who can afford to make the payments will simply pile up enough costs to get above whatever threshold has been established and back into the tort system.[43]

The states that have set up true compulsory no-fault insurance for bodily injuries have adopted a variety of thresholds, ranging from a low of $200 in New Jersey to one requiring death or serious disfigurement in Michigan.[44] The National Conference of Commissioners on Uniform State Laws in its proposed Uniform Motor Vehicle Accident Reparations Act suggests barring lawsuits unless pain and suffering losses exceed $5,000 and injury results in death, serious injury, or inability to work for six months.[45]

It is difficult to ascertain what effect various thresholds would have on the Texas system. The actuarial firm of Milliman and Robertson projected the total costs of general damages under three different lawsuit thresholds for Texas. Under the current tort system, payments for general damages are almost $36 million per year.[46] Under a "tight threshold" system, general damages are projected at $12 million; and with no threshold, the total amounts of general damages would be $34 million or about the same as under the present tort system.[47] Milliman and Robertson's data have been subjected to close scrutiny as a part of this study. The analysis is presented in Chapter Five.

A final suggestion offered by Austin attorney Paul Conner is that thresholds might be set in terms of defined injuries.[48] For example, a broken arm might not qualify for lawsuit and would simply be compensated according to actual medical expenses while a broken back, because of its long-term effect on the victim, would be an injury for which the victim could sue for compensation. At the moment, this system is merely a suggestion and has not been seriously investigated. Clearly, the job of defining which injuries would be "sueable" and which would not would be extremely difficult and time-consuming. It would probably be impossible to project with any accuracy the impact this sytem would have on general damages and on insurance premiums. It should be mentioned, however, that several states have similar kinds of measures as a part of their systems. Michigan, for example, has no dollar threshold, but limits recovery for general damages unless injuries result in death, serious impairment of body function, or permanent serious disfigurement. (see Table II-1, page12.) Many of the states with dollar thresholds also permit recovery under these conditions. Some extend the conditions to include bone fracture or loss of use of a body organ or member.

One state, Hawaii, has no fixed threshold. Instead the insurance commissioner establishes one annually.

Summary

Limiting the right to sue is the backbone of all no-fault insurance plans. It is supposedly this limitation that enables the lowering of automobile insurance premiums. The extent to which such premium reductions are possible under varying tort restrictions is examined in Chapter Five.

FOOTNOTES

[1]Willis Park Rokes, *No-Fault Insurance*, Insurers Press (Santa Monica, California, 1971), p. 3.

[2]The Kentucky law fits neither of these classifications in that it gives each insured the option to choose or reject no-fault insurance.

[3]Robert E. Keeton, "No-Fault Developments in Perspective," an address before the National Conference of Commissioners on Uniform State Laws, 1972.

[4]Rokes, p. 18.

[5]*Ibid.*

[6]State Farm Insurance Company, *No-Fault Press Reference Manual*. Published by the Public Relations Department of State Farm Insurance Companies (Bloomington, Illinois, September 1, 1973), p. G-120.

[7]Rokes, pp. 18-34.

[8]*Ibid.*, p. 34.

[9]*Ibid.*, pp. 18-34.

[10]State Farm Insurance Company, *No-Fault Press Reference Manual*, p. G-120.

[11]United States Department of Transportation, *Motor Vehicle Accidents and Their Compensation*, a report to Congress and the President by John A Volpe, Secretary of Transportation. March, 1971.

[12]The Insurance Information Institute, "No-Fault Gets a Green Light," *The Journal of Insurance*. July/August, 1973. pp. 13-20.

[13]Rokes, p. 19.

[14]*Ibid.*, pp. 18-34.

[15]For a discussion of Puerto Rico law see *National No-Fault Conference Transcript of Proceedings*, remarks by Mr. Frank W. Fournier, Executive Director of the Puerto Rican Automobile Accident Compensation Administration, pp. 51-72. Conference held in Dallas, Texas, July 22-23, 1973, sponsored by the Texas Association of Insurance Agents.

[16]The Insurance Information Institute, "No-Fault Gets a Green Light," p. 15.

[17]*Ibid.*, p. 16.

[18]State Farm Insurance Company, *No-Fault Press Reference Manual*, p. G-140.

[19]Rokes, pp. 26-27.

[20]State Farm Insurance Company "A Watershed Year for No-Fault," *State Farm Year*, 1972.

[21]State Farm Insurance Company, *No-Fault Press Reference Manual*, p. G-123.

[22]Insurance Information Institute, *First-Party Auto Insurance* (New York, July, 1973), p. 50.

[23]U.S. Department of Transportation, *Economic Consequences of Automobile Accident Injuries* (Washington, D.C., 1970), pp. 75-78.

[24]Insurance Information Institute, *First Party Auto Insurance*, p. 50.

[25]*Ibid.*

[26]U.S. Bureau of Labor Statistics, *Monthly Labor Review*, March, 1972.

[27]Public Affairs Research Council of Louisiana, *No-Fault Insurance–A Reasonable Alternative?* (Baton Rouge, Louisiana, January, 1974), p. 4.

[28]U.S. Department of Transportation, *Automobile Personal Injury Claims*, Volume II. (Washington, D.C., 1970), p. 122.

[29]*Ibid.*

[30]*Ibid.*, p. 123.

[31]*Ibid.*, p. 75.

[32]*Ibid.*

[33]*Ibid.*

[34]State Farm Insurance, *No-Fault Press Reference Manual*, p. G-103.

[35]U.S. Department of Transportation, *Automobile Accident Litigation*, (Washington, D.C., 1970), p. 7.

[36]U.S. Department of Transportation, *Motor Vehicle Crash Losses and Their Compensation* (Washington, D.C., March, 1971), p. 131.

[37]*Ibid.*

[38]U.S. Department of Transportation, *Economic Consequences of Automobile Accident Injuries*, p. 28.

[39]U.S. Department of Transportation, *Motor Vehicle Crash Losses and Their Compensation*, p. 136.

[40]Leroy Jeffers, *Statement before U.S. Senate Commerce Committee*, April 11, 1973, p. 2.

[41]*Ibid.*, p. 5.

[42]*Ibid.*, p. 19.

[43]Wayne Fisher of the Texas Trial Lawyers Association, Comments before L.B.J. School No-Fault Seminar, December 4, 1973.

[44]See "Table of State No-Fault Laws" presented earlier.

[45]Insurance Information Institute, *First-Party Auto Insurance*, p. 50.

[46]Milliman and Robertson, Inc., *Cost Estimate Study of No-Fault Automobile Insurance* (Pasadena, California, November 7, 1973), Appendix I-44.

[47]*Ibid.*

[48]Statement by Paul Conner, Comments before L.B.J. School No-Fault Seminar, January 29, 1974.

CHAPTER III

SPECIAL ISSUES AND PROBLEMS

THE CONSTITUTIONALITY OF NO-FAULT AUTOMOBILE INSURANCE

No-fault automobile insurance–because it proposes to eliminate or curtail traditional tort actions for damages resulting from automobile accidents, and to limit the amount of recovery under tort actions–raises some fundamental questions in relation to both the federal and state constitutions. Included among these issues are denial of due process, equal protection of the laws, the right to trial by jury, and the limitation of the common law tort action for recovery of damages. Additional issues may be raised depending on the particular provisions of each state constitution.

Constitutional Issues Under the United States Constitution

Although the federal courts have not as yet considered the constitutionality of a no-fault automobile insurance law, there have been decisions relating to other matters that may shed some light on whether such a law would withstand a test under the United States Constitution. Also, federal constitutional questions have been considered by state courts in ruling on the constitutionality of state no-fault laws.[1]

Federal constitutional issues which could be raised in the challenge of a no-fault law include denial of due process, equal protection of the laws, and abrogation of the right to trial by jury. The guarantee of due process of the law is included in both the Fifth and Fourteenth Amendments to the United States Constitution. Features of the various no-fault plans that might be subject to attack under these sections are the limitations on amounts that may be recovered for injuries, and elimination of the right to trial by jury in determing the right to and the amounts of damages.

The equal protection of the laws is guaranteed to all persons under the Fourteenth Amendment to the United States Constitution. Interpretations of this concept were limited for many years to the struggle for racial equality;[2] however, during the last decade, the equal protection clause has been expanded to cover other areas of political and social equality.[3] The important question concerning any proposed no-fault law is whether or not classifications made under that law constitute "invidious discrimination."

Under a true no-fault law, the right to bring suit to recover damages from the person at fault is either partially or completely abolished, thus removing the opportunity of an injured person to have the amount of his damages determined by an impartial jury. The right to trial by jury in a civil case under the Seventh Amendment to the United States Constitution has not been extended to actions in state courts through the Fourteenth Amendment; thus, the question in a suit challenging a state no-fault as denying the right to trial by jury under the federal constitution would be whether or not the coverage of the Seventh Amendment could be extended to the states through the Fourteenth Amendment, and, if so, would the statute deny the right to trial by jury.

The actual impact of the United States Constitution on the validity of a particular no-fault law is not known and can only be determined by a suit challenging the particular provisions of that law. However, some state courts have passed on the constitutionality of their no-fault laws and in doing so have considered federal constitutional issues. These cases should serve as guidelines to persons drafting no-fault laws to show the features of such a law that might not meet the tests under the United States Constitution.

Constitutional Issues under the Constitutions of Other States

Since the adoption of the first no-fault automobile insurance law in Massachusetts,[4] a number of other states have adopted no-fault laws, and in some of these states challenges have been made as to the constitutionality of these laws. The first final court decision concerning the constitutionality of a no-fault law was in Massachusetts. This law, which exempted the tortfeasor from liability up to $2,000, prohibited suits for pain and suffering in cases that involved less than $500 in bodily injury damages, and

limited the amount of lost wages that could be collected, was declared constitutional by the Massachusetts Supreme Judicial Court.[5] The court found that the statute in question did not unconstitutionally abolish a vested right in a common law tortsaction or deprive the plaintiff of due process and equal protection of the laws.

The Florida no-fault law[6] was challenged in two separate cases. In *Kluger v. White,*[7] the Florida Supreme Court found the property damage portion of that state's no-fault law to be unconstitutional because the law abolished the right to seek damages in tort, thereby leaving some persons without any redress for injury. The portion of the law relating to property damage provided for the purchase of first-party coverage but did not make the purchase mandatory. At the same time it abolished the right of all persons to sue a driver at fault if damages did not exceed $550. Since motorists were not compelled to purchase the insurance and those not purchasing it had no remedy, the statute abolished a long-standing right without providing a reasonable alternative remedy for uninsured drivers. The bodily injury portion of the Florida no-fault law was challenged in *Lasky v. State Farm Insurance Company.*[8] The plaintiff alleged that the law unconstitutionally restricted the right to sue for pain and suffering and created "invidious classifications" that violated the equal protection clauses of the federal and state constitutions. The court upheld the statute as being constitutional.

In *Grace v. Howlett,*[9] the Illinois Supreme Court declared the Illinois no-fault law[10] to be unconstitutional. This statute was found to violate several sections of the Illinois Constitution. First, the limitation on damages recoverable by persons not covered by no-fault benefits violated the Illinois Constitution, which prohibits a special law where a general law can be made applicable. Also, the law was unconstitutional because it provided for review of an arbitrator's decision by trial *de novo*, required the losing litigant to pay the arbitrator's fee, and violated the Illinois Constitution's provision for trial by jury, by requiring compulsory arbitration of certain cases.

In preparing any no-fault law for Texas, careful consideration should be given to the cases cited in this section plus others to be decided in the future that relate to federal constitutional questions and state constitutional provisions similar to those in the Texas Constitution. With such consideration, many constitutional obstacles may be avoided.

The Texas Constitution

Under the Texas Constitution, issues concerning no-fault automobile liability insurance are similar to those in other states where no-fault laws have been challenged on constitutional grounds. The areas for analysis that appear to be most applicable to Texas and its constitutional mandates and protections are due process, equal protection of the laws, access to the courts, and right to a trial by jury.

Due Process. One of the main arguments made against no-fault automobile insurance laws is that these laws deny an injured party the due process of the law guaranteed under both the federal and state constitutions. Article I, Section 19, of the Texas Constitution reads:

> No citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

The Texas Supreme Court has interpreted the requirement of Section 19 to mean that no person can be deprived of life, liberty, or property without legal proceedings according to rules and forms established for the protection of private rights. This course must be appopriate to the case and just to the party affected. It must give notice and provide a hearing.[11]

The term "law of the land" is synonymous with "due process of law" and means the general law operating equally on every member of the community.[12] Section 19, then, is construed to place the same restrictions on the Texas Legislature as those imposed by the United States Constitution.[13] However, the Texas Supreme Court has ruled that the liberty assured to every person does not grant an absolute right in each person to be at all times and in all circumstances wholly free from restraint.[14]

Under due process, a statute is subject to the constitutional challenge that it is unreasonable, oppressive, and arbitrary to such an extent that it deprives someone of life, liberty, or property without due process. Reasonableness is a question of law, but it is dependent on the facts to be established in the particular case.[15] Due process of law is secured if the law operates on all alike and does not subject the individual to the arbitrary exercise of the powers of government.[16]

No person, the Texas Supreme Court has held, has a vested right in a given mode of procedure and, so long as a substantial and efficient remedy remains or is provided, due process of law is not denied by the legislative change.[17] The remedy of first-party payment for actual damages under a no-fault automobile insurance law would substitute for the right to recover damages in a court of law. The determination of whether this remedy would be adequate to satisfy the requirements of due process under the Texas Constitution is a question for consideration by the courts. A determination of reasonableness can only be made on the facts of the particular situation and the provisions of the particular statute in question.

Equal Protection. If a single issue consistently raised to challenge the constitutionality of various no-fault automobile insurance laws throughout the country was selected, equal protection of the laws appears to be that issue. The contention is made that classifications provided in the laws

violate a person's right to equal protection of the laws. In Texas, persons are guaranteed equal protection of the laws under both the federal constitution and under Article I, Section 3, of the Texas Constitution, which provides that:

> All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate emoluments, or privileges, but in consideration of public service.

Section 3 generally has been interpreted to mean that all persons enjoy equality of rights.[18] The provision is designed to prevent any person or class of persons from being singled out as a special subject for legislation which is hostile or discriminatory.[19]

However, this provision does not prohibit the legislature from making classifications for purposes of implementing legislation.[20] Classification for the purpose of law is a legislative function,[21] and a state may place its citizens into reasonable classes without violating any person's rights to equal protection of the law.[22]

For a classification to be valid, there must be a reasonable basis for classification and the law must operate equally and the burdens rest impartially on all persons within the same class.[23] All members of a class must be treated alike under the same conditions.[24] The fact that a statute discriminates in favor of a certain class, however, does not make it arbitrary if the discrimination has a reasonable basis.[25] A classification is reasonable if it is based on a real and substantial difference having relationship to the subject of the particular law and operates equally on all within that same class.[26]

The classification, however, must not be arbitrary or capricious.[27] Any legislation that discriminates against persons of the same class and other persons in similar situations does violate equal protection.[28] Unequal treatment of persons under a state law which is founded on unreasonable and unsubstantial classification constitutes discriminatory state action and violates both the state and federal constitutions.[29]

A challenge to a classification must bear the burden of showing that the classification does not have a reasonable basis, because courts assume that a set of facts existed at the time the classification was made which would sustain the classification, if the facts could reasonably sustain it.[30] In short, courts allow wide discretion on the parts of legislatures in enacting laws and assume lawmakers had a valid purpose for a law before enacting it.

The question of violating the right of equal protection of the law under a no-fault statute ordinarily arises under statutes which prohibit the institution of suits for general damages unless the injured party has damages exceeding a certain threshold, or has suffered the loss of life or limb. For the equal protection challenge under the Texas Constitution to succeed, the challenger would have to show that the threshold and other exceptions were unreasonable by presenting a case that would indicate that the law did not substantially operate equally on all persons within the given class of automobile accident victims.

From basic principles for determining violation of equal protection, a challenge to no-fault in Texas would carry a burden to show that limitations on tort actions were unreasonable, arbitrary, and capricious. However, any decision on the question again lies with the court's determination of whether or not the particular statute adopted by the legislature included acceptable constitutional criteria in limiting or eliminating damage suits.

Access to the Courts. Under the Texas Constitution, every citizen is guaranteed access to the courts for remedy of injuries by due course of law. The provision is found in Article I, Section 13 of the Texas Constitution:

> All courts shall be open, and every person for an injury done him, in his lands, goods, person, or reputation shall have remedy by due course of law.

Under a no-fault law, access to the courts for remedy of injuries sustained in automobile accidents is either partially or completely abolished. The question arises whether this partial or complete abolition of common law tort action results in a violation of Article I, Section 13.

Several cases in both federal and state courts have interpreted the provisions of Section 13, the most important being *Middleton v. Texas Power and Light Company*.[31] In the Middleton case, the Texas and United States Supreme Courts upheld the Texas Workmen's Compensation Law and made an exhaustive analysis of Section 13[32] of the Texas Constitution.

The provisions of Section 13 must be read into every valid statute and the provisions of the statute must conform to this constitutional provision.[33] To conform, a statute may not abrogate vested rights because vested rights of action given by the common law are property rights and are protected by the constitution.[34]

Since the courts have held that the right to be protected by the constitution must be a vested right, a mere expectancy based on an anticipated continuance of an existing law is not protected. The right must be a legal or equitable title to the present or future enforcement of a demand or legal exemption of demand from another to be vested. If the state amends or repeals a law before rights become vested in a person, that person is left without a remedy at law to enforce his claim.[35]

The Texas Constitution does not hold inviolate the rules of common law which were adopted and may be changed by the Legislature.[36] No person has a vested right in the continuance of the present law in regard to a particular subject. The laws may be changed by the Legislature so long as they do not destroy or prevent an adequate enforcement of vested rights.[37]

Actions for accidental injury are creatures of common law and not the constitution. An action to recover for accidental injury in an automobile accident is based on the common law doctrine of negligence and, without this rule, there would be no liability for the injury and no cause of action.[38] Because of its authority to enact laws and to supercede common law, the Legislature is competent to alter or abolish this common law action.[39]

In *Middleton*, the Texas Supreme Court held that abolishing the common law negligence action of an employee against his employer did not divest the employee of a property right.[40] The statute only removes the right of action for future injury, substitutes another law governing recovery, and provides a different remedy.[41] This may be construed to be parallel to a situation in which the victim of an automobile accident may have his cause of action against a negligent driver partially or completely abolished, and be required to look to his own insurer for recovery.

This situation presents an interesting point. Since vested rights have constitutional protection, a statute may not have retroactive effect which will deprive a person who has an accrued cause of action from his opportunity to seek a remedy for his injuries in the courts.[42]

Other limitations on the Legislature in enacting a statute abolishing or limiting a cause of action are that the Legislature may not adopt a statute denying a citizen resort to the courts for recovery of damages for an intentional injury,[43] and that Article XVI, Section 26, of the Texas Constitution, prohibits the Legislature from abolishing a right of action for recovery of damages in cases of death resulting from a willful act or ommission or gross neglect.[44]

Generally, the indication is that a no-fault law partially or completely abolishing a common law negligence action as a remedy would not violate a person's right to access to the courts if the law:

- acts prospectively on causes of action which have not vested at the time the statute is adopted;
- provides an adequate substitute remedy for the injured party;
- does not abolish rights to action for intentional injury and death resulting from a willful act or ommission or gross neglect.

Trial-by-Jury. Partial or complete abolition of the common law tort action for recovery of damages resulting from automobile accidents also raises the question of whether or not the constitutional right to trial by jury is denied under a no-fault law. Two sections of the Texas Constitution, Article I, Section 15, and Article V, Section 10, relate to the right to trial-by-jury:

> (Section 15)
> The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same and maintain its purity and efficiency. . . .
>
> (Section 10)
> In the trial of all cases in District Courts, the plaintiff or defendant shall, upon application made in open court have the right of trial by a party to the case, and the jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.

Under the United States Constitution, there is no guarantee of the right to a trial-by-jury in the state courts. Its provisions are applicable only to trials in federal courts.[45]

The right to a trial-by-jury in the Texas Courts is not conferred in all classes of cases, but merely guarantees the continuance of the right unchanged as it existed in the common law or by statute at the time the constitution was adopted.[46] The inviolate right to a trial-by-jury is regulated by the rules which specify its availability. The rules now require some affirmative action to be taken by all parties to insure a jury trial.[47] The right is granted to all litigants who demand the right to a jury in the manner provided by law. On properly and reasonably demanding the jury and paying the fee, the right then becomes inviolate.[48]

The argument that a no-fault law that completely or partially abolishes the opportunity to seek a remedy in the courts would violate the right to trial-by-jury probably would not be sustained since the suit for damages is a civil action for which a jury demand must be made and a fee paid before the right becomes inviolate. With the abolition of the cause of action by law, it does not appear that a person would be in a position to argue successfully that the law deprives a person of an inviolate right.

THE POTENTIAL SHIFT IN RATES AMONG INSUREDS UNDER NO-FAULT INSURANCE: THE SUBROGATION ISSUE

The Texas Ratemaking Structure

There are several major objectives of any good ratemaking procedure. Rates are designed and regulated with these objectives in mind: (1) rates should be adequate to enable the insurer to earn a fair profit and remain solvent; (2) they should not be excessive; (3) they should not be unfairly discriminatory among insureds–that is, they should allocate the cost burdens among insureds on a fair basis; (4) they should be flexible enough to reflect current loss experience and trends; and (5) they should be designed to encourage loss-prevention efforts among insureds where possible.

Frankly, the questions of rate adequacy and excessiveness are not significantly affected by the no-fault issue. The same general procedure is currently used in Texas to establish rates for both fault coverages and no-fault

coverages (i.e., medical payments, collision, and comprehensive physical damage). Thus, whether or not a no-fault insurance system would cause a reduction in premiums would not affect the ratemaking procedure used to determine adequate rates (although some of the factors in the formulas might be changed–i.e., the percentage allowed for loss adjustment costs).

There is, however, a great potential for significant adjustments of rates among different insureds (i.e., through a change in the rate structure) under a no-fault insurance system. To understand how, we must briefly examine the current rating structure in Texas.

The automobile insurance rating system is basically a combination of a "manual" rating system and a "merit" rating system. This simply means that part of an individual's rate is determined by "grouping" factors such as geographic location, age of driver, and use of the automobile, while part is determined by the individual's own driving record. To determine an individual's liability insurance rate, for example, we would first determine the rating territory (there are four in Texas) in which the automobile is principally garaged. We would then determine the appropriate rating classification among the following:[49]

BASIC RATING CLASSIFICATIONS: (Private passenger autos owned by an individual or by two or more relatives who are residents of the same household.) For all coverages under Family-Standard Policy the "6" and "8" classifications are used when there is a driver 65 years of age or older. Farm autos may be owned by a family partnership or corporation.

1A(6A)	No male driver under 25, no unmarried female driver under 21, no business use, not driven to or from work or school. Clergymen with no male driver under 25 and no unmarried female driver under 21.
1B(6B)	No male driver under 25, no unmarried female driver under 21, no business use, driven to work or school.
1AF(6AF)	Farm auto, no male driver under 25, no unmarried female driver under 21, not used in business other than farming, not driven to or from work or school other than farming.
3(8)	No male driver under 25, used for business, or not individually owned. If business use is for U.S. Government by an employee thereof, class may be 1A(6A), 1B(6B) or 2D if appropriate restrictive endorsement is attached.
2A-1	Male driver under 21 is married or if single is not owner or principal driver.
2A-2	Male driver 21 or over but less than 25 is married or if single is not owner or principal driver.
2C-1	Male driver under 21 is single and is owner and principal driver.
2C-2	Male driver 21 or over but less than 25 is single and is owner or principal driver.
2D	Unmarried female driver under 21, no male driver under 25, no business use.
2AF-1	Farm auto, male driver under 21 is married or if single is not owner or principal driver, not used in business other than farming, not driven to or from work or school other than farming.
2AF-2	Farm auto, male driver 21 or over but less than 25 is married or if single is not owner or principal driver, not used in business other than farming, not driven to or from work or school other than farming.
2CF-1	Farm auto, male driver under 21 is single and is owner or principal driver.
2CF-2	Farm auto, male driver 21 or over but less than 25 is single and is owner or principal driver.
2DF	Farm auto, unmarried female driver under 21, no male driver under 25, not used in business other than farming, not driven to or from work or school other than farming.

This rate is then reduced if the car is a second or third car in the family or if the driver had had a driver training or defensive driving course. It is increased if he has been convicted of any traffic violations according to the following scheduled:[50]

DRIVING RECORD POINTS: Points shall be assigned in accordance with the following for motor vehicle violations for which the applicant or any operator of the vehicle currently a resident in the same household has been convicted during the experience period.

1. Three points shall be assigned for conviction of:
   (a) driving while under the influence of intoxicating liquor or narcotic drugs; or
   (b) failure to stop, render aid, or disclose identity when involved in an accident; or
   (c) negligent homicide, murder by driving while intoxicated or aggravated assault arising out of the operation of a motor vehicle; or
   (d) any offense punishable as a felony under the motor vehicle laws of the State of Texas.
2. Two points shall be assigned for conviction of:
   (a) driving while license is suspended or driving without a valid driver's or operator's license in force and effect; or
   (b) any other moving traffic violation as a result of which an operator's license was suspended or revoked.
3. One point shall be assigned under either the following (a) or (b), whichever produces the highest number, for conviction of each speeding violation, per operator:
   (a) beginning with the second such conviction within the latest 12 consecutive months; or
   (b) beginning with the third such conviction within the latest 36 consecutive months.

EXPERIENCE PERIOD: With respect to a policy or renewal obtained through the voluntary market, the experience period shall be the 36 months ending 3 months prior to the effective date of the policy or renewal.

DRIVING SUB-CLASSIFICATION AND SURCHARGES: The number of "Driving Record Points" accumulated during the experience period shall determine the sub-classification to be applied. Apply surcharge shown below to bodily injury property damage and medical payments at the selected limits and collision at the selected deductible form.

Number of Driving Record Points	Driving Record Sub-Classification	Surcharges
0	0	0
1	1	15%
2	2	35%
3	3	60%
4 or more	4	90%

Inherent in this rating system is the desire to vary individuals' rates according to two factors: their likelihood to be involved in accidents, and the likelihood that they would be at fault in any such accidents. It can be seen from the above illustration that teenage drivers are expected to be involved in and at fault in more than their share of accidents while those over 25 are far less accident prone as a group.

One of the early criticisms of no-fault automobile insurance was that the relatively dangerous drivers would be given lower rates while relatively safe drivers' rates would be increased.[51] The fairness in this result is seriously questioned. Nevertheless, if insurers are responsible to reimburse their own insureds for their injuries, regardless of how caused, then without some offsetting mechanism they would have to charge rates based solely on the likelihood of being involved in accidents and the probable size of resulting claims. Medical payments insurance is a good example of this kind of rate structure. While the younger drivers are still charged higher rates, the differentials are far less than those for liability insurance.

One possible solution to this problem of equity in rates is the subrogation clause. This mechanism for adjusting losses essentially between insurers has been used in most no-fault laws in the U.S. and Europe.

Subrogation

In a strict legal sense subrogation is the substitution of one person for another as a creditor, the new creditor succeeding to the rights of the former. In the insurance field subrogation developed as an offshoot of the principle of indemnity. Under the principle of subrogation, an insurance company that has indemnified the insured's loss is entitled to recovery from a liable third party. Thus, if A negligently causes damage to B's person or property, B's insurance company will indemnify B to the extent of its liability for B's loss and will then have the right to proceed against A and his insurance company for any amounts it has paid out under B's policy. Subrogation has been a long-standing part of the tort liability system, and it is interesting to examine the purposes for which it has been used in the automobile insurance industry.

As presently practiced, subrogation has two distinct and often mutually exclusive functions: it is used as a means of preventing insureds from collecting more than their actual losses (if B's company did not have the right to sue A then B might collect from his insurance company and also from A in a lawsuit); it is used as a means for shifting losses between insurance companies.

Interestingly, while the subrogation clause has been used for years in property insurance, it has not been applied in health insurance, nor in medical payments coverage under the automobile policy. This inconsistency has also been extended to the new Personal Injury Protection. The result of these practices is a rating system that does not reflect fault.

Subrogation is permitted in most if not all the true no-fault laws. While insureds are not permitted to sue those at fault in the accident, their insurers are permitted that right. Since the insurer is given a right which the insured does not have, a legal expert might argue that, technically speaking, this is not "subrogation." The intent of the practice, however, is to permit insurers to adjust losses among themselves on the basis of fault. As long as everyone is insured, then insurers will only deal with other insurers. If a driver does not have insurance, then he is violating the law since all true no-fault plans are compulsory. Consequently, he loses his immunity from suit.

By permitting insurers to recover their losses when their insureds are not at fault and requiring them to reimburse other insurers when they are, no-fault automobile insurance can operate under the existing rate structure. Thus, drivers who tend to cause accidents will pay the higher rates, while those who are safe drivers but might have greater losses in case of accident (i.e., because of age, health, income level, etc.) pay the lower rates.

The actual dollar amounts transferred under this arrangement should be tabulated in the early years of no-fault plans, as well as the costs associated with making these settlements between insurers. The system could prove to be expensive, greatly reducing the benefits provided. In any case, however, it should prove cheaper than making such settlements through the current legal system.

Another limitation of this practice is the potential effect on some insureds' rates because their insurers settled claims even though the insureds were not at fault. This same limitation exists with the present system, however, since only the insurer has the right to settle or refuse settlement with an injured third party. Also, in Texas, rates are determined by traffic violations, not by at-fault accidents unless a traffic violation was issued.

COORDINATION OF BENEFITS: THE PRIMACY ISSUE

The Family Automobile Policy (FAP) is the automobile insurance policy usually purchased by private automobile owners. It consists of four major parts:

- liability for bodily injury and property damage;
- medical payments;
- uninsured motorist protection; and
- physical damage.

Payment under each of these sections, except the medical payments section, at some point involves the question of fault.[52] Medical payments insurance is actually a health insurance contract and pays for the medical claims of occupants of an insured's car, regardless of who may have been at fault in the accident. In addition, the automobile insurer must pay these medical claims regardless of any collections made by the insured from other sources, even when the insured sues and receives payments from the other motorist in the accident. For example, the insured might collect compensation for losses incurred in an accident: (1) from the medical payments portion of his policy, (2) from a liability judgment against the other driver, and (3) from the insured's health insurance plan. Some will argue that a victim, seriously injured in an accident because of some other driver's negligence, deserves all the compensation he can get. However, insurers point to the undesirable results brought on by the excessive cost of an accident when duplication of benefits occurs, as in the example cited. Each claim made with an insurance company is eventually reflected in the premiums paid by every person insured by that company.

The high cost of automobile insurance in the present fault system has been one of the principal factors leading to the widespread discussion of no-fault automobile insurance. However, the overlapping of benefits, which contributes to the high cost of automobile insurance, might also occur within a no-fault system. To prevent this overlap, most proposed no-fault systems make provisions for a coordination of benefits between various insurance companies.

The question of coordination of benefits revolves around three issues:

- Should a person be permitted to carry two types of insurance, each of which pays the same benefits in certain situations?
- If yes, should one of these types be primary, i.e., should one insurance pay first, and the second one pay only if the first one does not cover all costs?
- If the answers to both of the previous questions are yes, which insurance should be designated as primary?

Each of these issues will be addressed and arguments, both pro and con, for allowing automobile insurance to be primary will be presented, and recommendations made.

Duplicative Benefits

In the tort liability system which still dominates automobile insurance today, an automobile accident victim receives compensation after he has proved the other person has caused the accident. The person determined to be at fault–or his insurance company–pays the victim for his losses, as determined by the court. As mentioned previously, the victim frequently is entitled to similar benefits from health, accident, or income continuation plans. However, the principal idea behind the present fault system–that the negligent driver should "pay" for the damage or injury he has caused–has led to the "collateral source rule," which holds that the negligent driver should not benefit just because the victim receives compensation from other sources. Thus, "these other benefits are generally disregarded in setting the automobile liability insurance award."[53]

Duplication of benefits might also be the result of: (1) consumer confusion about benefits from various insurance plans, and (2) the requirement to purchase more than one plan.[54] If a consumer does not desire or need duplicative benefits, then the imposition of such requirements upon the consumer is an economic waste, both for the consumer and for society as a whole.

With no-fault insurance, which is generally compulsory, an owner is required to provide medical and wage benefits for anyone injured in his car. The compulsory aspect renders duplication of benefits much more likely. Those who desire extra benefits should pay extra premiums for them, and those who feel that benefits from one plan are sufficient should not be required to pay for both. Many consumers might choose to pay smaller premiums and eliminate duplicative benefits. Many are interested principally in full compensation for loss, but not in possible profit from illness or injury. For the individual consumer, the fairest and most desirable course would seem to be the benefit of a choice between lower total premiums and coverage of actual expenses, or higher premiums and duplicative or excessive coverage. In fact, although coverage under two different plans might overlap, the consumer might need both plans to insure complete coverage of all possible expenses, because of the limitations in each plan. A health-insurance program and "any automobile insurance system should afford the consumer the widest range of informed choices, should subject him to as little compulsion as is compatible with other objectives, and should give him as much influence as possible over the quality he buys."[55] However, as pointed out earlier, duplicative payments have an escalating effect on the premiums paid by *all* those insured under both plans.

Present Practices in Texas. In Texas, when an automobile insurance company receives a claim against a medical payments portion of a policy, the company automatically pays the claim. No attempt is made to discover if the victim or claimant has other coverage or receives other payments.[56] The same policy applies to any

claims against the new Personal Injury Protection (PIP) plan in Texas. Thus, the stacking of benefits for an automobile accident victim is a likely occurrence. Health insurance companies usually check to see if the victim has other group insurance and some do not pay if Workmen's Compensation covers the medical costs.[57] Mrs. Mildred Hurt, supervisor of the Health and Group Life Policy Unit of the Texas State Board of Insurance,[58] explained that the Health Policy Unit approves group contracts, which provide for coordination of benefits with other group health plans. However, this unit does not approve group contracts which would coordinate health benefits with private or individual insurance, except automobile insurance. The last official ruling which the Health Policy Unit is using states that a "company can coordinate benefits with automobile insurance policies, whether no-fault or otherwise, but they cannot coordinate with individual A & H (accident and health) policies."[59]

A legal counsel with Blue Cross/Blue Shield of Texas, Steven McDonald,[60] stated that this health insurance company has a subrogation provision in its contract. This provision is exercised in connection with liability compensation for automobile accident victims but cannot be applied to the medical payments portion of the automobile insurance policy. On the form which must be filled out by or for a hospital patient requesting Blue Cross compensation, the company tries to determine if a patient was admitted because of an automobile accident injury, and if other group insurance would cover the patient. According to a spokeswoman at Brackenridge Hospital in Austin[61] and Ms. Hurt with the Insurance Board, Blue Cross/Blue Shield coordinates with other group plans so that, between the groups, they pay 100% of the medical expenses of the insured, with the proportions of the total claim paid by each group plan decided between the two companies. In numerous cases, this proration system achieves a coordination of benefits where two group health plans are concerned. According to one source, such coordination is in the interest of the buyers of insurance:

> It keeps down premium costs. If benefits are paid in excess of expense, neither the patient nor the doctor has a financial incentive to control the use of cost of medical services. As a result, medical expense goes up; premiums for insurance go up.
>
> To the person concerned, it may seem desirable to receive benefits in excess of his expense; but every time he does so, he increases the future premium cost for himself and others carrying like insurance. When others do the same thing, they increase the cost for themselves and him.[62]

The obvious conclusion to be drawn from these comments is that duplication of benefits should be avoided if premiums are to be kept as low as possible.

The Question of Primacy

Methods for avoiding a duplication of benefits (or, to put it another way, for coordinating benefits) have been discussed by the insurance industry for years. An insurance industry study group in November, 1961, explored the problem of health over-insurance. The report of this group indicated the need for an anti-duplication provision "which will permit the regular benefits of the group plan to be payable when the individual has no other coverage, but which will reduce these benefits to such a point that the individual does not make a profit when he has other insurance covering the same loss."[63] This group excluded from its study the overcompensation resulting from the collateral source rule employed in liability cases; instead, it devoted its attention to duplication between strictly health plans. It investigated the difficulties involved in implementing anti-duplication provisions. One of these problems is the necessity of relying on the patient or victim to supply information on other health or medical coverage which might apply in a particular situation. "Since no one likes to have his benefits reduced, there is a strong temptation for the claimant not to report other coverage."[64] Furthermore, an anti-duplication provision in a group insurance policy "must define. . .the basis of measuring over-insurance in terms of both expenses and time. . .(and) also must indicate how the regular benefits will be reduced when over-insurance is deemed to exist."[65]

Two methods might be employed to determine the benefits each plan will pay a claimant who has duplicated benefits. One method is for the insurance companies to specify which insurance will pay first in each instance, i.e., which insurance would be the primary source of benefits for a particular claim, while the secondary source would pay only if the first source were exhausted before all expenses were paid. Another method provides that each insurance company pays a pro-rata share of the claimant's allowable expenses, such that all the claimant's expenses are paid, with proportions determined by the insurance companies involved. As pointed out earlier, this is already done in some instances by Blue Cross/Blue Shield.

The study group of the Health Association of America was requested to draft sample group anti-duplication provisions. The group wrote a model provision using two guiding principles:

- The provision should permit recovery of all medical expenses.
- The claim settlement should be simple.[66]

The decision to recommend a provision based upon the order of benefit determination system (i.e., the primary-secondary method) was based on public understanding. It was felt that an average person would have difficulty calculating a mathematical ratio and thus understanding a

proration system. The intricacies of the proposed model provision need not be included in this report. The study was devoted to a discussion of coordination of benefits between health plans and apparently did not consider payment of medical expenses through automobile insurance policies. However, the study does add emphasis to the contention of no-fault automobile insurance proponents that, where medical coverages overlap, one source should be designated as a primary source and the other secondary. In addition to the overall savings to the compensation system engendered by this policy, the designation of one source as primary would permit the lowering of rates of the secondary source. The same comments which apply to coordination of medical benefits might be made in connection with wage-continuation plans. Coordination of collateral sources in both instances would certainly be supported by many consumers and would produce a more efficient system.

Designation of a Primary Source

This brings up the third question—which source should be primary? Given two possible sources of compensation for the automobile accident victim, which source might best meet the criteria of economic efficiency, quick delivery, and adequate and just compensation? The automobile insurance package has been offered as the secondary and as the primary source in different plans. Both alternatives will be discussed in this section. These discussions will disregard possibilities under some form of national health care. A national health care plan might impinge definitively on the primary issue. "If a health program designed primarily against 'catastrophic illness' is enacted, its narrow provisions may enable automobile carriers to preserve their traditional primacy in automobile accident cases. On the other hand, should a more comprehensive method be successful, its advocates are expected to fight hard to make health insurance primary."[67]

Automobile Insurance as the Secondary Source

Medical expenses. The principal supporters of health insurance as the primary source for compensation of medical expenses are the health-insurance companies and particularly Blue Cross. The Texas Blue Cross division has made no statements in this respect but rather has adopted a "wait and see" stance.[68] This company has apparently ignored the duplication of benefits which occurs at present with the medical payments and PIP sections of the automobile insurance policy. In some other states, Blue Cross has negotiated actively to write coverage for the first-party medical benefits in automobile insurance policies.[69] In Maryland, Blue Cross entered a contract with the state fund to service *all* motorists insured through the Maryland Automobile Insurance Fund. However, in New Jersey, Commissioner McDonough ordered that Blue Cross contracts be written to exclude benefits of persons eligible under the state's no-fault law. In other states, such as Virginia and Wisconsin, Blue Cross has requested of legislators that the company at least be granted the opportunity to compete with other companies for primary coverage. The overall policy of Blue Cross has apparently followed that of the Texas division—the policy of waiting until no-fault passage seems likely before making the move to make health insurance primary.

The principal arguments for making health insurance primary revolve around the reputedly greater efficiency of health care plans as opposed to automobile insurance plans. "One analysis addressing the cost efficiency of the automobile accident liability insurance system from the consumer's perspective has indicated that 44 cents out of every premium dollar collected is used to compensate accident victims for their losses."[70]

Several specific proposals making automobile insurance secondary will be considered here:

The New York Plan. The New York Insurance Department elaborated on the DOT figure of 44 cents: (1) eight cents of the 44 cents actually paid out to victims duplicates compensation from other sources; (2) 21.5 cents goes for "pain and suffering;" and (3) only 14.5 cents goes to compensation for net economic loss.[71]

Partially on the basis of this documented inefficiency, the New York study chose to make automobile insurance secondary to other benefits, a decision designed to:

> . . .facilitate the integration of benefits, while letting insurance mechanisms of proven high efficiency continue to provide basic health and income coverages. It also permits the new plan to give full compensation to the seriously injured and still to reduce automobile insurance premiums sharply.[72]

However, the New York Insurance Department never documented its statement that other insurance mechanisms have proven high efficiency. Furthermore, the inefficiencies of the automobile insurance system related above refer *only* to the bodily injury liability system. It does not address the efficiency of the medical payments portion of the automobile policy, which pays on a first-party basis, operating in a manner comparable to other health insurance plans. As many proponents of no-fault insurance are prone to point out, comparing the bodily injury liability automobile insurance program to the average health care program "is an apples-and-oranges comparison."[73]

The New York study does point out that without statutory specifications making automobile insurance either primary or secondary, the latitude for voluntary arrangements will permit numerous variations, including the possible evolution of automobile insurance as primary. Apparently, the Insurance Department was not strongly opposed to the primacy of automobile insurance.

Another statement made by the Insurance Department—that making automobile insurance secondary would "facilitate the integration of benefits"[74] is never explained or amplified. If it refers to *all* benefits accruing from an automobile accident, the statement is incomprehensible. Logic would argue that automobile insurance primacy would "facilitate the integration of benefits" more easily because of the experience of automobile insurance companies with all aspects of automobile accidents. The arguments for making automobile insurance secondary in New York are tenuous and the recommendation was followed only partially in New York's Comprehensive Auto Insurance Reparations Act. In this law, first-party benefits for economic loss due to injury are to be paid, less "amounts recovered or recoverable on account of such injury under state or federal laws providing social security disability benefits or workmen's compensation benefits,"[75] but apparently it does not make private health insurance primary. However, provision is made for the superintendent to permit deductibles over $200 in the case of an insurance plan "designed and implemented to coordinate first-party benefits with other benefits."[76] Thus the New York Plan *does* allow flexibility as the Insurance Department recommended.

The Hawaii Plan. Hawaii's original no-fault plan, which was to take effect on July 1, 1974, but was amended and became effective September 1, 1974, declared that benefits payable by motor vehicle insurers were to be secondary to benefits from health insurance, as well as from social security and workmen's compensation. This was done after a comprehensive study by the State Legislative Auditor's office.[77] The consultants for this study gathered extensive data to present on the current situation in order to be able to develop an alternative preferred automobile insurance system. Some of the data were incorporated in a table which compared the loss payout ratios for several lines of insurance.[78] This table showed that health plans and group accident and health coverages were more efficient in delivering benefits from 1960 to 1970 than third party liability coverages. While it cost $1.66 to deliver $1 of bodily injury benefits under automobile insurance, non-commercial and commercial health care plans were able to deliver the $1 of benefits for $1.09 to $1.33.[79] After determining that these health care plans were substantially more efficient than automobile plans, the report recommended that a Hawaii no-fault law make automobile insurance secondary to these existing, efficient health care plans. The final recommendation seemed to be a justifiable conclusion from the data except that, again, the health care plans were compared only to the bodily injury liability portion of the automobile insurance policy. Evidently for this and other reasons presented later, the Hawaii legislature reversed itself and made automobile insurance primary except for social security, workmen's compensation, and public assistance.

The Massachusetts Plan. The no-fault law in Massachusetts is a variation which permits automobile insurance to duplicate other medical payments unless the insured elects to have a deductible for himself or his whole family. Massachusetts thus gives drivers wanting to tailor automobile coverages to other sources of benefits a chance to cut costs 6 to 30 percent—depending on the size deductible (up to $2,000) they choose.[80]

The Pennsylvania Plan. The Pennsylvania No-Fault Motor Vehicle Insurance Act, approved July 19, 1974, and effective July 19, 1975, gives motorists an option to designate other group or individual insurance policies as primary insurers. If the option is exercised, the automobile insurance rate is to be reduced to take into consideration the reduction in expected claims payments. Even if not exercised, automobile no-fault benefits are excess over workmen's compensation; state-required, non-occupational temporary disability insurance; social security (with certain exceptions); and all other government provided benefits. There also appears to be an attempt, when the automobile policy is the primary insurer, to force the excess insurer to lower rates to the insured [see Section 203(a)].

Wage Losses. While the medical payment portion of the automobile policy does not cover wage loss, the new Personal Injury Protection portion of Texas automobile insurance, as well as all no-fault laws and similar PIP plans in other states, does pay lost wages or the cost of replacement services.

In New York, compensation for wage losses by an automobile insurance policy is secondary to other wage-continuation plans. The arguments for this policy are the same as those used in connection with medical benefits.

Hawaii also originally extended its policy of making automobile insurance secondary with respect to wage continuation, with a limit of $600 per month. It was determined that this would fully cover 50 percent of all Hawaii wage earners. However, optional excess wage-loss coverage could be purchased by those with incomes over $700 per month. Work-loss benefits are based on an economic determination of income in the immediate past. This policy was a deliberate attempt "to avoid most or all of the expensive and time-consuming hearings procedures with which the workmen's compensation process is encumbered."[81] The table comparing various insurance plans had demonstrated that, where it cost $1.66 to deliver $1 of bodily injury benefits under automobile insurance and $1.09 to $1.33 to deliver bodily injury benefits under other health plans, it cost workmen's compensation $1.90 to deliver $1 worth of benefits. Since workmen's compensation was shown to be more inefficient than liability plans, it was decided to avoid any plans similar to it. Again, however, the legislature abandoned this plan for one making automobile insurance primary.

Massachusetts adopted a unique approach. Compensation for wage loss is secondary to other wage continuation

plans, but "if one should exhaust the employer's sick leave or wage-continuation plan benefits as a result of an automobile accident and subsequently sustain a non-vehicular accident or sickness, then personal injury protection steps back into the picture to pick up this loss."[82] In this instance, duplication is avoided. However, the possible reinvolvement of automobile insurance when an insured experiences a non-vehicular accident or sickness might create additional administrative costs, which could be avoided if automobile insurance were primary.

The Pennsylvania Plan treats wage losses the same as medical expenses, except there is a limit of $15,000 on the amount which must be carried. The insured again has the option of making such benefits primary or excess.

Automobile Insurance as the Primary Source. Most other current plans call for automobile insurance to be primary with respect to medical and wage-continuation benefits. Many automobile insurance companies, including those in AIA, support automobile insurance as the primary source. Both the Department of Transportation studies and the proposed Hart-Magnuson federal bill, support the primacy of automobile insurance. Virginia Knauer, the Director of the Federal Office of Consumer Affairs, stated that "benefits obtainable by the victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source where feasible."[83] State Farm, in its *No-Fault: Press Reference Manual*, presents the most complete arguments for making automobile insurance primary under a no-fault system:[84]

> (1) Automobile insurance should be effective and efficient—thus, it must be mandatory and should avoid duplication of benefits. The mandatory automobile insurance, if primary, would provide swift, full coverage and the health care program would need merely to verify that a loss occurred due to an automobile accident. However, if the automobile insurance were secondary, the automobile insurance system would have to go to great expense to discover the existence of other insurance benefits, a lengthy and costly procedure.
>
> (2) Health care plans do not cover wage losses. If health care plans were primary, compensation for wage loss would require a separate claim to another company. The necessary coordination between several plans would create additional costs to the compensation system.
>
> (3) Health care benefits might be used up on an accident if these benefits were primary, and thus not available for a sickness.
>
> (4) If health care plans were primary, automobile insurance costs would vary according to the other benefits a person has purchased. An affluent suburbanite who has other benefits would thus have lower automobile insurance premiums than the center-city dweller without the alternative health care plan.
>
> Certainly someone who has other health coverage should pay lower rates on automobile insurance. However, that person is also paying extra premiums for the primary health care plan, which the poorer person is *not* doing. Still, it is true that making health care plans primary does accentuate the difference between the situations of these two persons.
>
> (5) Health care plans, as non-profit corporations, do not pay the same rate of state and federal taxes as insurance companies do. If health care plans were primary, State and Federal governments could lose millions of dollars.
>
> (6) Finally, and most importantly, even the New York insurance department agrees that the internalization of motoring costs is desirable. "The costs of motoring... [should] be distributed equitably among automobile owners" (State Farm, p. G-262), rather than among participants of health care plans, some of whom may have no car and do not drive.
>
> In addition, if automobile insurance is primary, automobile insurance companies would be able to better plan and predict future costs, rather than guessing at possible outcomes of court suits. This would permit lower rates. Finally, health care plans should be able to lower rates if they are to provide only supplementary coverage for automobile accident victims.

Summary

Most authorities agree that duplication of benefits creates higher total costs for the consumer. In order to reduce total costs, provision should be made for a coordination of benefits so that one source of compensation is made primary and the other source is not used to compensate automobile accident victims unless the primary source is exhausted before all losses are paid. More benefits, or duplication of benefits, could be made available on an option to consumers willing to pay the extra premiums, but duplicate claims on the same accident would escalate premium costs for all.

Some correlation of benefits might be achieved within the fault system. At present, the feeling that the person responsible for an injury in an automobile accident should pay for his negligence precludes any coordination between liability payments and health care benefits. However, coordination between the medical payments portion of an automobile policy and other health care plans (or the personal injury protection available in Texas) should achieve a reduction in rates. All the arguments advanced by the insurance companies (as presented in the State Farm Manual) for making automobile insurance primary over other health and wage-continuance plans are also applicable to the "no-fault" portions of the Texas automobile insurance policy.[85] If Texas retains the fault system, reduction in premium rates should be achieved through coordination of benefits. If full payment of losses is guaranteed, many consumers would probably welcome the rate reductions attendant to coordination of benefits. However, this correlation should be made clear to con-

sumers. Richard Walsh,[86] in his statement to the National No-Fault Conference, said that automobile insurance "medical coverage should be primary as among private systems."[87] He does not explain that *public* or government systems are deducted from automobile insurance benefits in the Federal plan. Leroy Jeffers, President of the Texas State Bar, has pointed out this "hidden hooker which is. . .designed to reduce the amounts of the benefits paid."[88] Although many consumers might not object to this "hidden hooker" if it means reduction of premiums and speedier compensation, the consumer should be made very aware of these deductions. If a no-fault plan is proposed in Texas, all benefits and limitations of both the fault and no-fault system should be well-delineated. If consumers elect a no-fault system without being made aware of the facts, they will protest vigorously as all aspects of the system are revealed, and may force expensive changes in the future.

COMPULSORY AUTOMOBILE INSURANCE

Introduction

Until recently, automobile insurance has been a voluntary expense of a car owner or operator, except in Massachusetts, North Carolina, and New York, where some form of automobile liability insurance has been compulsory for a number of years. The automobile liability policy ". . .began as a protection for the driver-policyholder himself against liabilities he might incur due to his own conduct."[89] This was later extended to cover a driver operating someone else's car with the owner's permission. However, this voluntary coverage was by no means widespread. As a result, many accident victims were not compensated for their loss. The number of accident victims grew over the years, as did the costs incurred by these victims.

With a growing number of automobile accident victims crippled physically, mentally, emotionally, and financially, most states responded with the passage of financial responsibility laws, hoping to increase compensation to accident victims. These laws required that, after being found at fault in an automobile accident, a driver must show proof of adequate insurance or other monetary resources before being permitted to drive again. As a result, the number of insured drivers increased significantly. For example, Table 1 at the end of this chapter shows the large jump in the percentage of insured automobiles in Texas in 1952, the year the state's Financial Responsibility Law became effective.[90]

In spite of the financial responsibility laws, however, many victims remained uncompensated. Three states concluded that compulsory liability insurance would aid in improving compensation of automobile accident victims. Massachusetts introduced compulsory bodily injury liability in 1927. New York and North Carolina required bodily injury and property damage liability beginning in 1957 and 1958, respectively.

These compulsory programs have had varying degrees of success, but none of them have been completely satisfactory. Massachusetts and New York have moved on to no-fault automobile insurance and a no-fault program has been proposed in North Carolina. "The evidence is compelling that social attitudes in the U.S. are focusing more upon the loss of the injured than upon his moral shortcomings."[91] At this point, it is necessary merely to note the trend towards compulsory, as opposed to voluntary, automobile insurance.

Numerous questions arise concerning the effects of compulsory automobile insurance. The motives for compulsion include the desirability of increasing the number of insured motorists and thus increasing the number of automobile accident victims who would be compensated. After decades of experience with compulsory automobile insurance in Massachusetts, New York and North Carolina, it was presumed that the effects of the laws in these states and the difficulties with enforcing them would be well-documented. However, although numerous references were located documenting the woes of the Massachusetts situation, data concerning the change in the number of insured drivers or cars in Massachusetts, New York, or North Carolina after their compulsory laws became effective, proved illusory. In order to obtain this data, questionnaires were sent to the insurance departments in these states and three other states (Connecticut, Florida, and New Jersey) which had instituted compulsory no-fault laws at least a year previously. The results should have provided some basis for comments and recommendations on compulsory insurance, especially as it might apply in Texas. Unfortunately, although all six states responded, many of the questions were either left unanswered or were not completely answered. Because of this incomplete response to the questionnaire, conclusions will be somewhat speculative.

The Purpose and Form of the Questionnaire

The questionnaire was devised as an aid in determining the effect of a compulsory factor in automobile insurance on the number of uninsured motorists in a state. Related to this question were the problems of enforcement and administration of compulsory automobile insurance, including the problems with high-risk motorists and out-of-states motorists. The other aspect considered was the problem of any remaining uninsured motorists.

The first question of the survey asked for the coverage required by the state. Every state included requires bodily injury and property damage liability. The minimum re-

quired ranges from $5,000 per person and $10,000 per accident ($5,000/$10,000) in Massachusetts to $20,000/$40,000 in Connecticut. The only state which does not require personal injury protection (PIP) is North Carolina, which has instituted a no-fault law. The PIP coverage limits in the other five states range from $2,000 in Massachusetts to no-limit on medical expenses in New Jersey.

Enforcement and administration generally are performed by a state motor-vehicle department. New York created an Insurance Control Bureau to administer its law. The "original FS certification program increased personnel by approximately 350 employees."[92] Later changes reduced personnel to 200 and the Insurance ID program, introduced in June, 1972, reduced personnel to about 100. The new ID program should permit a $1.5 million savings from the previous $7.5 million annual costs. New York appears to have experienced substantial costs with its compulsory program. Florida apparently avoided these costs by shifting the burden of checking on insurance policies to private motor-vehicle inspection stations. However, the Florida law has been in effect too short a time to determine the real costs of the program. The other four states did not enclose any information on the effect of the administration of their compulsory laws on the motor vehicle departments. Three of the six states have undertaken strict enforcement of their compulsory insurance program.

The effectiveness of Florida's method of requiring evidence of insurance when applying for car inspection, which depends on the cooperation of hundreds of non-state employees, will be of great interest to other states contemplating compulsory insurance. Massachusetts and North Carolina require evidence or certification of automobile insurance at automobile registration. The other three states check on insurance after reportable accidents and, in New York, perform spot checks of ID card verifications of insurance. Although New Jersey did not mention this in its reply, other evidence indicates [hat it also has adopted an ID program.[93]

Penalties for non-compliance include a fine and/or imprisonment in all states, accompanied (in all states but North Carolina) by a suspension of the driver's license for varying time periods. Data concerning the change in the number of uninsured motorists would prove valuable in evaluating the effectiveness of the various plans. Unfortunately, many state insurance departments are apparently unaware of the ratio of uninsured motorists in their state before the institution of their compulsory programs. New Jersey was the only state which submitted data, showing that 9.8 percent of its motorists were uninsured, based on 1969 data–the latest available. Connecticut estimated a change from 10 percent to 7 percent with the inception of no-fault, and Florida and New York said they expected some change. New York estimated that its 1957 compulsory law changed the uninsured percentage from a previous 10 percent-15 percent to 1.5 percent-4 percent. Massachusetts made no comment on this question. However, another source indicated that there were about 2 million motorists in Massachusetts in 1968, with 1.8 million cars covered by compulsory liability insurance.[94] Since more than one motorist frequently is covered by a policy, this appears to indicate a very low percentage of uninsured motorists in 1968. The extreme discrimination of insurance companies in North Carolina, which had placed 30 percent of all North Carolina motorists in the Assigned Risk Program, undoubtedly persuaded many motorists to take a chance on driving without insurance.[95] North Carolina hopes to alleviate this particular problem with its new Reinsurance Facility, which replaced the Assigned Risk Program on October 9, 1973. Up to 1974, however, North Carolina either has not succeeded in reducing the number of uninsured motorists or is unaware that it has. Massachusetts also has a reinsurance facility, where no rate distinctions are based on individual risk characteristics. Florida replaced its Assigned Risk Program with its Joint Underwriter's Association. The other states have insurance plans for licensed motorists who have difficulty obtaining insurance elsewhere.

Connecticut and North Carolina require some minimum coverage of out-of-state motorists. Florida requires compliance with no-fault laws if a car has been in the state 90 days out of the past 365 days. The other three states surprisingly indicated no laws with respect to out-of-state motorists.

Only two states indicated any problems in the administration of a compulsory automobile insurance law. Connecticut's respondent indicated difficulties in obtaining convictions for non-compliance. New York pointed out that enforcement of orders of revocation was low priority for urban police because of the crime rate.

Detailed data on the six states as reported by the questionnaire are tabulated in Table 2 at the end of this chapter. The questionnaire sent to the various insurance commissioners is reproduced in Appendix A.

Compulsion: Its Effects on Automobile Insurance

Compulsion by a government in any area indicates the high degree of importance attached to that area by the public at large. Compulsory automobile insurance is reflective of a society's desire to: (1) assure compensation to automobile accident victims and, (2) to place the burden of that compensation on those who drive automobiles. Judging by the comments in the LBJ School survey, each insurance department contacted believes that cost is the main reason some motorists remain uninsured. Other motorists do not believe they will (or they *hope* they will not) be involved in an accident.

Enforcement of Compulsory Automobile Insurance. Compulsion does not lower the costs of automobile insurance premiums and thus induce uninsured motorists to purchase insurance. The effectiveness of a compulsory automobile insurance program is probably tied to determined enforcement of the compulsory law and convincing penalties for non-compliance. Florida's Regional Vice-President of State Farm Insurance Company, Merrill Grafton, reported that the compulsory insurance aspects of the Florida law have not solved the problem of uninsured motorists. "The law was intended to be compulsory, but the legislature didn't put enough teeth into it."[96] Minor punishment does not spur compliance with the law.

Punishment by fine and/or imprisonment for non-compliance seem to be universal penalties as well as the suspension or revocation of the driver's license, and sometimes the loss of car registration. New York's license revocation is for a year—others range from 30 days to 6 months.

Most of the respondents stated that permission to operate an automobile on state roads is contingent upon the assumption by the driver of the financial responsibility for injury or damage that he might cause or experience. Thus, the compulsory aspect is usually enforced at the time the vehicle is registered. Unfortunately, some states still detect non-compliance only after a reportable accident, the method which was used under the financial responsibility laws, i.e., Connecticut. New York's employment of the same technique has been reinforced by the use of spot-checks of ID cards bearing verification of insurance, and has been effective in reducing the percentage of uninsured motorists to a minimum (1-4 percent). The use of this method or the requirement for evidence of insurance during car registration appear to be the most desirable and effective methods for enforcement of compulsory automobile insurance, although Florida's innovative method warrants attention.

Police cooperation with enforcing a compulsory program would also be required, as indicated in the New York response. If police are engrossed in reducing a large crime rate, enforcement of compulsory automobile insurance will either necessitate enlargement of the police force or will become a low priority item. Reliance on reportable accidents as a principal means of detecting non-compliance may be a necessity in many states, even though it might not be the most effective method.

Administration. It would be expected that the enforcement of compulsory automobile insurance and administration of such a program would pose problems. It must be assumed that additional personnel would be required to check insurance policies, issue ID cards if those are used, and maintain records. New York's program indicated this result, as well as an expected cost element. Even though Florida indicated no increase in personnel or cost with the new program, the new program had just begun. Some expense will undoubtedly be generated in processing paper work. If Florida succeeds in reducing the percentage of uninsured motorists without additional administrative costs, then other states may wish to employ the same enforcement and administration procedures. Statistical information on state costs incurred with the adoption of a compulsory program are difficult to locate. Most of the concern centers around the costs to the consumer.

Availability of Insurance. If insurance is compulsory it must be available to all licensed drivers. Some of the assigned risk plans or comparable plans permit surcharges for drivers with adverse driving records. The reinsurance facilities of Massachusetts and North Carolina apparently prohibit a difference in rates which are based entirely on risk characteristics of an individual. The implication is that rate differences must be based on driving records. In North Carolina, the insurance companies were evidently placing *all* drivers under 25 and over 65 in the Assigned Risk category without reference to the individual's driving record.[97] This type of arbitrary rate classification by insurance companies has drawn considerable criticism and outcry from consumers, and is an issue which becomes more critical when a state's automobile insurance is compulsory.

Remaining Uninsured Motorists. Compensation will still be unavailable even after compulsory insurance and guaranteed availability programs are adopted. Many will still remain uninsured. Even if a car is insured, insurance companies are not required to pay if the driver is committing a felony and causes injury or damage. Compensation may not be forthcoming from or to hit-and-run drivers, and out-of-state drivers, even though the latter are generally expected to carry the minimum coverage required of residents. Of course, all victims will be compensated if they carry their own no-fault coverage and uninsured motorist coverage. For losses above first-party limits, many of the problems that exist today will continue. Relatively high first-party limits will assure compensation; such increased limits should be made available for this reason.

Summary

Arguments for and against compulsory automobile insurance are plentiful.[98] Most of the documented criticism is directed at compulsory tort liability, especially as implemented in Massachusetts. Insurance companies in general have been particularly outspoken against compulsory tort liability, but on the other hand, many insurance companies are urging adoption of compulsory no-fault automobile insurance. Compulsion appears to be taken for granted at the present time, evidence of a consensus of opinion that compensation for automobile accident victims must be improved.

If Texas decides to adopt a compulsory plan, the State

Board of Insurance must be aware of and address the problems attendant with compulsion:

- Enforcement of the law, which includes methods for determination of compliance and penalties for non-compliance;
- Administration, which includes a determination of which agency or agencies will implement the law, the probable cost, and the increase in personnel;
- The assurance of availability of insurance to all licensed motorists, which would include consideration of rating systems;
- The provision of compensation for victims of "problem drivers," such as hit-and-run drivers, drivers who are committing a felon, or out-of-state motorists.

TABLE III-1

(1) Registration Year	(2) Number of Registered Passenger Automobiles[1] And Annual Percentage of Increase	(3) Number of Registered Passenger Automobiles In Use[2] .95 x (2)	(4) Automobile Liability Insurance Accident Year	(5) Number of Liability Insured Private Passenger Automobiles[3] And Annual Percentage Of Increase	(6) Percentage oOf Texas Private Passenger In Use Automobiles Insured For Liability [(5) + (3)] x 100%
4/1/71 To 3/31/72	5 329,004 (+ 4.6%)	5,062,554	7/1/71 To 6/30/72	3,977,692 (+ 3.5%)	78.6
4/1/70 To 3/31/71	5,092,881 (+ 2.4%)	4,838,237	7/1/70 To 6/30/71	3,844,478 (+ 5.6%)	79.5
4/1/69 To 3/31/70	4,974,678 (+ 3.6%)	4,725,945	7/1/69 To 6/30/70	3,641,834 (+ 3.6%)	77.1
4/1/68 To 3/31/69	4,799,710 (+ 4.7%)	4,559,725	7/1/68 To 6/30/69	3,515,105 (+ 6.9%)	77.1
4/1/67 To 3/31/68	4,586,188 (+ 3.3%)	4,356,879	7/1/67 To 6/30/68	3,288,519 (+ 4.6%)	75.5
4/1/66 To 3/31/67	4,440,155 (+ 3.5%)	4,218,147	7/1/66 To 6/30/67	3,142,509 (+ 4.5%)	74.5
4/1/65 To 3/31/66	4,291,048 (+ 2.2%)	4,076,496	7/1/65 To 6/30/66	3,006,247 (+ 5.8%)	70.1
4/1/64 To 3/31/65	4,197,483 (+ 4.5%)	3,987,609	7/1/64 To 6/30/65	2,841,942 (+ 6.4%)	71.3
4/1/63 To 3/31/64	4,016,616 (+ 4.8%)	3,815,785	7/1/63 To 6/30/64[5]	2,669,911 (+ 5.3%)	70.0
4/1/62 To 3/31/63	3,832,445 (+ 5.3%)	3,640,823	7/1/62 To 6/30/63	2,535,731 (+ 7.0%)	69.6
4/1/61 To 3/31/62	3,639,208 (+ 3.6%)	3,457,248	7/1/61 To 6/30/62	2,369,169 (+ 5.9%)	68.5
4/1/60 To 3/31/61	3,512,620 (+ 2.6%)	3,336,989	7/1/60 To 6/30/61	2,237,468 (+ 4.0%)	67.1
4/1/59 To 3/31/60	3,423,342 (+ 4.0%)	3,252,175	7/1/59 To 6/30/60	2,151,848 (+ 4.5%)	66.2
4/1/58 To 3/31/59	3,291,857 (+ 1.9%)	3,127,264	1/1/58 To 12/31/58	2,059,587 (+ 6.6%)	65.9
4/1/57 To 3/31/58	3,231,426 (+ 3.7%)	3,069,855	1/1/57 To 12/31/57	1,931,813 (+10.2%)	62.9
4/1/56 To 3/31/57	3,115,525 (+ 3.1%)	2.959,749	1/1/56 To 12/31/56	1,752,761 (+ 7.4%)	59.2
4/1/55 To 3/31/56	3,023,114 (+ 8.0%)	2,871,958	1/1/55 To 12/31/55	1,631,379 (+ 4.4%)	56.8
4/1/54 To 3/31/55	2,798,122 (+ 6.9%)	2,658,216	1/1/54 To 12/31/54	1,563,083 (+ 5.7%)	58.8
4/1/53 To 3/31/54	2,617,848 (+ 5.9%)	2,486,956	1/1/53 To 12/31/53	1,478,988 (+ 2.1%)	59.5
4/1/52 To 3/31/53	2,472,840 (+ 2.5%)	2,349,198	1/1/52 To 12/21/52	1,448,789 (+41.1%)	61.7
4/1/51 To 3/31/52	2,412,022 (+ 4.1%)	2,291,421	1/1/51 To 12/31/51[4]	1,026,823 (+74.0%)	44.8
4/1/50 To 3/31/51	2,316,279 (+13.2%)	2,200,465	1/1/50 To 12/21/50	590,286 (+29.5%)	26.8
4/1/49 To 3/31/50	2,045,543 (+15.0%)	1,943,266	1/1/49 To 12/31/49	455,802 (+16.1%)	23.5
4/1/48 To 3/31/49	1,778,748 (+10.9%)	1,689,811	1/1/48 To 12/31/48	392,661 (+16.6%)	23.2
4/1/47 To 3/31/48	1,604,641 (+11.5%)	1,524,409	1/1/47 To 12/31/47	336,744 (+28.4%)	22.1
4/1/46 To 3/31/47	1,439,255 (+10.5%)	1,367,292	1/1/46 To 12/31/46	262,175 (+16.3%)	19.2
4/1/45 To 3/31/46	1,302,292 ----------	1,237,177	1/1/45 To 12/31/45	225,460 ----------	18.2

[1]Includes all the passenger automobiles registered in Texas except those automobiles declaring an exemption. Source: Texas Highway Department–Motor Vehicle Division.

[2]Total number of passenger automobiles registered (2) reduced by 5 percent to recognize those automobiles not in use such as automobiles for sale on dealer's lots, salvaged automobiles, etc.

[3]Includes non-fleet private passenger automobiles only, since most fleet private passenger automobiles are insured. Also includes those private passenger automobiles in the Assigned Risk Plan. Does not includes those private passenger automobiles insured for liability by the Texas County Mutuals. It is estimated that in 1972 the County Mutuals insured for liability approximately 4 percent of the total private passenger automobiles insured for liability in Texas. Source of those figures displayed in Column (5): Insurance Service Office annual consolidated report of Texas private passenger automobile liability insurance experience.

[4]The Texas Financial Responsibility Law calling for $5,000/$10,000/$5,000 basic limits liability coverage became effective January 1, 1952, and accounted for the tremendous increase in the number of automobiles insured during the latter part of 1951 and during 1952.

[5]The Texas Financial Responsibility Law was amended to require basic limits liability of $10,000/$20,000/$5,000 on January 1, 1964.

Source: Texas State Board of Insurance, *Texas Private Passenger Automobiles Insured for Bodily Injury and Property Damage Liability*, Comparison of the Number of Passenger Automobiles Registered by the Texas Highway Department and the Number of Private Passenger Non-Fleet Automobiles Insured for Liability Insurance, Prepared on July 1, 1973, Austin, Texas, page 1.

TABLE III-2

ELEMENTS OF A COMPULSORY AUTOMOBILE INSURANCE PROGRAM IN SIX STATES

CONNECTICUT

1. *Required Coverage*:

Effective–January 1, 1973

Bodily Injury Liability	$20,000/$40,000
Property Damage Liability	$ 5,000
Basic Reparation Benefits	$ 5,000/$200 maximum weekly amount
Uninsured Motorist	$20,000/$40,000

2. *Methods for Discovery of Non-Compliance*:

When reportable accident occurs (bodily injury or $400 property damage) Motor Vehicle Department then refers case to local police department for appropriate action.

3. *Penalties for Non-Compliance*:

1) a fine up to $500
2) a jail sentence up to 90 days
3) loss of license and registration

4. *Reasons for Non-Compliance*:

1) cannot afford coverage
2) don't expect to be involved in accident

5. *Program for High-Risk Motorists*:

Availability through Connecticut Automobile Insurance Plan, in which all insured licensed drivers in Connecticut must participate. Eligibility for this insurance depends on:

1) Applicant unable to obtain insurance at rates no higher than those of plan in last 60 days,
2) Applicant has a valid license and registration in effect.

6. *Change in Number of Uninsured Motorists:*

Unknown because evidence of insurance not a requirement at registration. Estimate 10 percent uninsured motorists before January 1, 1973, and 7 percent after that.

7. *Problems in the Administration of a Compulsory Insurance Law*:

Problems in obtaining convictions for non-compliance. Arrests are made from referrals by Motor Vehicle Department, or by confession of the motorist. There is some question as to what would be considered admissible evidence should an owner contest a prosecution for non-compliance.

8. *The Law with Respect to Out-of-State Motorists*:

All private passenger out-of-state vehicles are required to maintain the minimum coverages while operating their vehicles in Connecticut. Any owner who fails to provide the required security will be held personally liable for the payment of basic reparation benefits.

9. *Uninsured Motorists Coverage*:

10. *Other Comments by Respondent*:

One possible solution to difficulty in obtaining convictions for non-compliance might be the requirement of evidence of insurance at the time of an accident. A non-car owning person, injured in Connecticut and not entitled to benefits under another policy, may apply to the Connecticut Assigned Claims Plan for benefits.

FLORIDA

1. *Required Coverage*:

Effective–January 1, 1972

Personal Injury Protection	$5,000
Bodily Injury Liability	$10,000/$20,000
Property Damage Liability	$5,000

2. *Methods for Discovery of Non-Compliance*:

1) Processing of accident reports, DWI convictions, etc.
2) Requirement for automobile liability insurance coverage in order to be inspected
3) Insurance industry must advise of cancellations of new or renewed business within six months

3. *Penalties for Non-Compliance*:

1) Suspension of driver's licenses and tags/registration
2) Owner is unable to have vehicle inspected

4. *Reasons for Non-Compliance*:

Cost, especially in urban areas. In rural areas, individuals feel that they will not be exposed to automobile accidents.

5. *Program for High-Risk Motorists*:

   A Joint Underwriters Association, which consists of 14 companies.

6. *Change in Number of Uninsured Motorists*:

   Expect fewer after enactment of Motor Vehicle Inspection Law, effective January 1, 1974. No record of insured drivers before 1974.

7. *Problems in the Administration of a Compulsory Insurance Law*:

   No major problems. . . .expect Motor Vehicle Inspection Law to assist in administration of compulsory insurance law.

8. *The Law with Respect to Out-of-State Motorists*:

   Every owner of a motor vehicle which was physically present in the state for more than 90 days during the preceding 365 days must comply with the state's no-fault law. Financial Responsiblity Laws apply in Florida for uninsured out-of-state motorists.

9. *Uninsured Motorists Coverage*:

   No state program to cover uninsured motorist.

10. *Other Comments by Respondent*:

    Insurance Department administers compulsory program and experienced no change in the number of personnel or administrative costs.

MASSACHUSETTS

1. *Required Coverage*:

   Bodily Injury Liability . . . . . $5,000/$10,000
   (Effective - 1927)
   Property Damage Liability $5,000
   (Effective - 1971)
   Personal Injury Protection $2,000
   (Effective - 1970)

2. *Methods for Discovery of Non-Compliance*:

   Evidence of insurance required when registering vehicle.

3. *Penalties for Non-Compliance*:

   Criminal offense.

4. *Reasons for Non-Compliance*:

   Attempt to avoid premium payment.

5. *Program for High-Risk Motorists*:

   Reinsurance facility–no rate distinctions based on individual risk characteristics.

6. *Change in Number of Uninsured Motorists*:

   No comment on previous experiences. Basic group of primarily young drivers fail to pay premiums and thus originally obtained insurance terminates so expect the same number next year.

7. *Problems in the Administration of a Compulsory Insurance Law*:

   No problems enforcing compulsory law.

8. *The Law with Respect to Out-of-State Motorists*:

   Mandatory uninsured motorist coverage protects Massachusetts residents but Massachusetts laws do not affect out-of-state motorists.

9. *Uninsured Motorists Coverage*:

   Mandatory uninsured coverage.

10. *Other Comments by Respondent*:

NEW JERSEY

1. *Required Coverage*:

   Effective–January 1, 1973
   Bodily Injury Liability . . . $15,000/$30,000
   Property Damage Liability . $5,000
   Uninsured Motorists . . . .$15,000/$30,000/$5,000
   Personal Injury Protection . . . . . ?

2. *Methods for Discovery of Non-Compliance*:

   Under jurisdiction of Division of Motor Vehicles.

3. *Penalties for Non-Compliance*:

   First offense: either a $50-200 fine, 30-90 days in jail, or both, 6 months license revocation
   Second offense: 3 months in jail, 2 year license revocation and such persons must make application to the Director of Motor Vehicles for restoration.

4. *Reasons for Non-Compliance*:

   Cost

5. *Program for High-Risk Motorists*:

   Automobile Insurance Plan provides coverage for every insured. Those with an adverse motor vehicle record of accident or convictions are subject to additional charges established according to objective criteria. New Jersey does not allow "non-standard" programs which are not based on objective criteria.

6. *Change in Number of Uninsured Motorists*:

   Previous uninsured. .9.8 percent–expect reduction in number of uninsured with redistribution of cost and rate reduction as result of no-fault plan.

7. *Problems in the Administration of a Compulsory Insurance Plan*:

   None, except social problems of relatively high cost of insurance.

8. *The Law with Respect to Out-of-State Motorists*:

   None

9. *Uninsured Motorists Coverage*:

10. *Other Comments by Respondent*:

NEW YORK

1. *Required Coverage*:

   Effective January 1, 1957
   Bodily Injury Liability . . . . . $10,000/$20,000
   Property Damage Liability $5,000
   Effective February 1, 1974
   Personal Injury Protection $50,000

2. *Methods for Discovery of Non-Compliance*:

   Under ID card program–verification of insurance on a random basis after registration and on a specific basis checking convictions, accidents, and complaints on date of occurrence.

3. *Penalties for Non-Compliance*:

   Non-operating condition–30 day revocation of registration
   Operating condition–one year revocation of driver's license and registration plus $300 civil penalty

4. *Reasons for Non-Compliance*:

   1) hard core uninsured motorist
   2) non-payment of premium due to economic conditions or habit
   Primary Reason–Law does not require a non-cancellable policy during period of registration

5. *Program for High-Risk Motorists*:

   New York Automobile Insurance Plan, the state's assigned risk program, provides insurance for any licensed motorist unable to secure required coverage in the voluntary market. The Insurance Department has approved premium schedules which impose surcharges on motorists involved in chargeable accidents or violations of traffic laws.

6. *Change in Number of Uninsured Motorists*:

   Before 1957, 10-15 percent of motorists were uninsured.
   After 1957, 1.5-4 percent. Expect reduction in that percentage with ID program.

7. *Problems in the Administration of a Compulsory Insurance Law*:

   Police enforcement of orders of revocation. This occurs primarily in the larger metropolitan areas, where it is difficult to locate revokees and where the problem has low police priority due to crime rate.

8. *The Law with Respect to Out-of-State Motorists*:

   Until February 1, 1974, out-of-state motorists driving on roads in New York were subject to New York's tort laws. Motor Vehicle Accident Indemnification Corporation provides indemnity to persons injured by uninsured persons.

9. *Uninsured Motorists Coverage*:

10. *Other Comments by Respondent*:

    In an attempt to enforce the compulsory insurance law, New York tried a monetary penalty to reimburse police but this was unsuccessful. The Deparment has a self-enforcement program utilizing "stops" on driver's license and registrations records which prevent revokee from effecting a transaction with Department while under revocation.

NORTH CAROLINA

1. *Required Coverage*:

   Effective–1957
   Bodily Injury Liability . . . . . $15,000/$30,000
   Property Damage Liability $5,000

2. *Methods for Discovery of Non-Compliance*:

   1) Owner must certify insurance policy in effect at annual registration with Department of Motor Vehicles
   2) Insurers must notify Department of Motor Vehicles of cancellation of policy

3. *Penalties for Non-Compliance*:

   1) Department of Motor Vehicles to pick up license plate if insurance is not obtained
   2) Fine or imprisonment at discretion of court-misdemeanor

4. *Reasons for Non-Compliance*:

   Cost

5. *Program for High-Risk Motorists*:

   Instituted a reinsurance facility to replace the Assigned Risk Program on October 9, 1973. Companies and agents must write minimum coverage for every one. Companies may then reinsure the risk with the reinsurance facility which all insurers in North Carolina are required to participate in proportionately.

6. *Change in Number of Uninsured Motorists*:

   No comment

7. *Problems in the Administration of a Compulsory Insurance Law*:

   Biggest problem was the assigned risk system which has been replaced by the reinsurance facility.

8. *The Law with Respect to Out-of-State Motorists*:

   Liability coverage required to operate car in North Carolina.

9. *Uninsured Motorists Coverage*:

   Must be provided by insurer if desired by motorist.

10. *Other Comments by Respondent*:

FOOTNOTES

[1]*Pinnick v. Cleary*, 271 N.E. 2d 592 (1971); *Lasky v. State Farm Insurance Company* et. al., 296 So. 2d 9 (1974).

[2]*Slaughterhouse Cases*, 83 U.S. (16 Wall) 36 (1873); *Civil Rights Cases*, 109 U.S. 3 (1883); *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Sweatt v. Painter*, 339 U.S. 629 (1950); *Brown v. Board of Education*, 347 U.S. 483 (1954).

[3]*Baker v. Carr*, 369 U.S. 186; *Levy v. Louisiana*, 391 U.S. 68 (1968); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

[4]Chapter 670, Acts of the Massachusetts General Court, 1970.

[5]*Pinnick.*

[6]Florida Automoblie Reparations Reform Act (Chapter 627, Florida Insurance Code).

[7]281 So. 2d 1 (1973).

[8]*Lasky.*

[9]283 N.E. 2d 474 (1972).

[10]Article XXXV, Illinois Insurance Code.

[11]*Steddum v. Kirby Lumber Co.*, 221 S.W. 920 (1920).

[12]*Ex Parte Sizemore*, 8 S.W. 2d 134 (1928).

[13]*Mellinger v. City of Houston*, 3 S.W. 249 (1887).

[14]*City of New Braunfels v. Waldschmidt*, 207 S.W. 303 (1918).

[15]*City of West University Place v. Ellis*, 134 S.W. 2d 1038 (Tex. Comm'n. App., 1940).

[16]*Sizemore.*

[17]*Luse v. City of Dallas*, (Civil Appeals) 131 S.W. 2d 1079 (1939) error refused.

[18]*Friedman v. American Security Co. of New York*, 151 S.W. 2d 570 (1941); *Burroughs v. Lyles*, 181 S.W. 2d 570 (1944).

[19]*Ibid.*

[20]*Ex Parte George*, 215 S.W. 2d 170 (1948); *Burroughs*; *Friedman*; *Middleton v. Texas Power and Light Co.*, 185 S.W. 556 (1916).

[21]*Ibid.*

[22]*Railroad Commission of Texas v. Miller*, 434 S.W. 2d 670 (1968); *Bjorgo v. Bjorgo*, 402 S.W. 2d 143 (1966).

[23]*Burroughs*; *George*; *Friedman*; *Beaumont Traction Co. v. State*, 122 S.W. 615 (1909).

[24]*Union Central Life Insurance Co. v. Chowning*, 26 S.W. 982 (1894).

[25]*Nichols v. Park*, (Civil Appeals) 119 S.W. 2d 1066 (1938), no writ.

[26]*Railroad Commission of Texas; Friedman; George.*

[27]*George.*

[28]*George.*

[29]*Rucker v. State*. 342 S.W. 2d 325 (1961).

[30]*George.*

[31]*Middleton v. Texas Power and Light.*

[32]Articles 8306-8309, Revised Civil Statutes of Texas, 1925, as amended.

[33]*Olschewske v. Priester*, 276 S.W. 647 (Tex. Comm'n. App., 1925).

[34]*Middleton.*

[35]*City of Dallas v. Trammel*, 101 S.W. 2d 1009 (1937); *National Carloading Corporation v. Phoenix-El Paso Express, Inc.*, 176 S.W. 2d 564 (1944).

[36]*Middleton; Castleberry v. Frost-Johnson Lumber Co.*, 283 S.W. 141 (Tex. Comm'n. App., 1926).

[37]*Ibid.*

[38]*Ibid.*

[39]*Castleberry.*

[40]*Middleton.*

[41]*Ibid.*

[42]*International and G.N.R. Co. v. Edmundson*, 222 S.W. 181 (Tex. Comm'n. App., 1920).

[43]*Middleton; Castleberry.*

[44]*Castleberry.*

[45]*White v. White*, 196 S.W. 508 (1917); *Texas Liquor Control Board v. Jones*, (Civil Appeals) 112 S.W. 2d 227 (1937) no writ.

[46]*White; Ex Parte Garner*, 246 S.W. 371 (1922); *Texas Liquor Control Board.*

[47]*Green v. W.E. Grace Manufacturing Co.*, 422 S.W. 2d 723 (1968).

[48]*Blair v. Paggi*, 238 S.W. 639 (1922); *Central and M.R. Co. v. Morris*, 3 S.W. 457 (1887); *Barker v. Kidd*, (Civil Appeals) 357 S.W. 2d 490 (1960) no writ.

[49]*Texas Automobile Insurance Rating Manual* (Austin: Texas Insurance Department), under Private Passenger Rating Rules.

[50]*Ibid.*

[51]Calvin Brainard, "Is Equity of Insurance Being Sacrificed?" *Trial Magazine*, October/November, 1967, pp. 38-40.

[52]Liability by definition is concerned with fault. The uninsured motorist protection is payment for bodily injury by a person's own insurance company, *if* the driver of the other car is uninsured and is determined to be at fault. An insured person may also collect for physical damage to the insured car from his own company without reference to fault, but the company may collect the costs of the damage from a liable third party.

[53]State of New York, Department of Insurance, *Automobile Insurance...For Whose Benefit?* A Report to Governor Nelson A. Rockefeller, (Albany, N.Y., 1970), p. 31.

[54]For example, an employee might be required to participate in a company's health program. The same person might also be required to buy personal injury protection under a state law.

[55]State of New York, Department of Insurance, pp. 120-121.

[56]This policy was stated definitively by Jack Puryear of Neiman, Hanks, and Puryear (an insurance agency in Austin), and by Dennis Washkoviac, with Royal-Globe Insurance in Austin. Both were interviewed by telephone on April 22, 1974.

[57]According to Shirley Jenkins, with Boon-Chapman Insurance Managers, in a telephone interview on April 22, 1974.

[58]From a telephone interview on April 22, 1974.

[59]Memo to Mrs. Mildred Hurt, dated September 28, 1973.

[60]Interviewed by telephone on April 23, 1974.

[61]Mrs. Bartley with the Medical Insurance Section of Brackenridge Hospital, Austin.

[62]Life and Health Claim Association of Greater Kansas City, *Coordination of Benefits can help Keep Down the Cost of Health Care*, pp. 23-33, of attachments to *Second Report of the Industry Task Force on Coordination of Benefits* to the Accident and Health Protection (C-1) Subcommittee of the NAIC Life, Accident and Health Committee, November 13, 1970.

[63]Health Insurance Association of America, *Group Health Insurance Viewpoints on Overinsurance*, Group Insurance Bulletin, No. 3-61, prepared by a Joint ALC-HIAA-LIAA Study Group, (Chicago, November 30, 1961), p. 8.

[64]*Ibid.*, p. 9.

[65]*Ibid.*, p. 22.

[66]Health Insurance Association of America, *Group Insurance Bulletin, No. 3-62*, Second Report of the Joint ALC-LIAA-HIAA Study Group on Non Duplication of Accident and Health Insurance Benefits, October 22, 1962, p. 2.

[67]An editorial, "Auto Primacy: Pro and Con," *the Journal of Insurance*, Vol. XXXIV, No. 4, July-August, 1973, pp. 5-6.

[68]Steve McDonald, Counsel, Blue Cross/Blue Shield, Dallas.

[69]The information on Blue Cross efforts in other states comes from the editorial "Auto Primacy: Pro and Con."

[70]U.S. Department of Transportation, *Motor Vehicle Crash Losses and their Compensation in the United States*: A report to the Congress and the President, March, 1971, p. 51. The quote is a reference to a statement by Robert

[71]State of New York, Department of Insurance, p. 36.

[72]*Ibid.*, p. 114.

[73]T. Lawrence Jones, (President of the American Insurance Association), *The Case for Making Auto Insurance Payments "Primary,"* dated April 27, 1973, p. 4.

[74]State of New York, Department of Insurance, p. 114.

[75]New York Statutes, Article 18, Section 671, 2(B).

[76]*Ibid*, Section 672, 3.

[77]Hawaii, Legislative Auditor, *A study of Hawaii's Motor Vehicle Insurance Program*; a report to the Legislature of the State of Hawaii, conducted by Haldi Associates, Inc., Special Report No. 72-1, January, 1972.

[78]*Ibid.*, p. 42.

[79]*Ibid.*, p. 42-43.

[80]Texas Association of Insurance Agents, (TAIA) *National No-Fault Conference: Transcript of Proceedings*, July 22-23, 1971, (Insurance Publishing House, Austin, Texas, 1971), p. 46.

[81]Legislative auditor of the State of Hawaii, p. 135.

[82]TAIA, p. 45.

[83]*Ibid.*, p. 283.

[84]State Farm Insurance Companies, *No-Fault Press Reference Manual*; (Bloomington, Illinois, 1973), p. G-262.

[85]The medical payments and personal injury protection portions of the Texas Standard Family Automobile Insurance Policy.

[86]Deputy Director of the Office of Policy and Plans Development in the Office of the Secretary of Transportation.

[87]TAIA, p. 98.

[88]Leroy Jeffers, Statement before the Committee on the Judiciary of the United States Senate (Washington, D.C., December 4, 1973), p. 15.

[89]N.Y. Insurance Department, *Automobile Insurance... For Whose Benefit?* A Report to Governor Nelson A. Rockefeller, Albany, 1970, p. 45.

[90]In 1971, the Supreme Court declared that a drivers license could not be withheld or revoked under a financial responsibility law unless a judgement of fault in an automobile accident had been rendered. See *Bell v. Burson*, 91 S. Ct. 1586, 1971 and *Gayton v. Cassidy*, 91 S. Ct. 2202, 1971. Thus these laws are virtually ineffective now.

[91]Willis P. Rokes, *No-Fault Insurance*, Insurors Press, Santa Monica, California, 1971, p. 7.

[92]L.B.J. School, *Survey Questionnaire: Compulsory Compliance in Automobile Insurance*, N.Y., 1974.

[93]New York Times Index, 1973.

[94]Massachusetts Special Commission. *First Interim Report Relative to Compulsory Motor Vehicle Insurance and Certain Related Matters*, (Springfield, January, 1970).

[95]From a speech by John Randolph Ingram, Commissioner of Insurance, to the Communications Workers of America on February 5, 1974. He also pointed out that "65 percent of the people placed on Assigned Risk were safe drivers with no driving violation points on their driving records for the past three years."

[96]State Farm Insurance Company, "A Watershed Year for No-Fault," *State Farm Year*, 1972, p. 24.

[97]John Randolph Ingram, North Carolina Commissioner of Insurance, in a speech to the Communications Workers of America, February 5, 1974.

[98]See, for example, Robert E. Keeton and Jeffrey O'Connell, *Basic Protection for the Traffic Victim*. (Boston: Little, Brown and Co., 1965), pp. 76-118; Mark R. Greene, *Risk and Insurance*, 3rd Ed. (Cincinnati, Ohio: Southwestern Publishing Co., 1972), pp. 395-396; Willis P. Rokes, *No-Fault Insurance* (Santa Monica, California: Insurors Press, 1971).

CHAPTER IV

EXPERIENCES OF OTHER STATES WITH NO-FAULT INSURANCE

No-fault automobile insurance in the United States was instituted first in Massachusetts on January 1, 1971. Florida's no-fault law was effective on January 1, 1972, and the New Jersey and Connecticut laws a year later. Ten other states have since adopted true no-fault laws. Each of these laws is compulsory and contains restrictions on tort liability.

Information on the results of the no-fault laws in Massachusetts and Florida is gradually becoming available, but is still incomplete. With the exception of New York, statistical data on the experiences of other states is not yet available. The paucity of information on the effects of a no-fault law thus limits the conclusions which can be drawn concerning its effects. However, this section will summarize the information available from the Massachusetts, Florida, and New York experiences and indicate possible conclusions and concerns for other states.

Massachusetts

The consensus of numerous studies of the Massachusetts no-fault system is that few conclusions can be drawn from the Massachusetts experience. "Serious students of automobile insurance hereby discounted the Massachusetts experience as a valid inferential base for predicting the true impact of no-fault on case results in other and more nationally representative state markets."[1] The principal reason for Massachusetts' lack of applicability to other states is the unique situation in Massachusetts prior to the adoption of its no-fault law.

Massachusetts had instituted compulsory bodily injury liability automobile insurance in 1927. However, property damage liability was *not* required. The result was a tremendous number of claims for bodily injury. Many of these apparently were spurious "whiplash" claims by victims suffering property damage.[2] "Many people feigned injury to collect for damage to their cars caused by an at-fault driver, especially when they carried deductible collision or no collision coverage at all."[3] This tendency of motorists to file bodily injury claims in order to recover property damage loss led to high bodily injury rates. "When no-fault was introduced, Massachusetts had the highest claim frequency in the country."[4] In anticipation of reduced expenses, because of the expected elimination of most of the negligency claims, the Massachusetts insurance department mandated a 15 percent cost-reduction in personal injury protection. However, the number of personal injury claims, which had been expected to rise 30 percent, actually decreased by 34 percent. Profits for the insurance companies from this miscalculation were quite large–about "$50 million according to one source."[5] In 1972, State Insurance Commissioner Ryan ordered a 27.6 percent decrease in personal injury rates. "On top of that, motorists in 1972 got a government–ordered rebate of about 26 percent on 1971 bodily injury premiums–an average of $12 per car–because no-fault was cutting costs of settling claims faster than had been expected."[6] However, although bodily injury rates were reduced substantially, "property damage coverage went up during 1971 by 38.4 percent over 1970."[7] In the end, the total insurance bill increased as the benefits under no-fault decreased (personal injury payments were limited to $2,000 and 75 percent of wage loss payments, with the latter secondary to other wage continuation plans). On the other hand, rates in Massachusetts had been frozen for four years[8] and insurance agents are quick to point out that "the collision and property damage rates would have gone up in Massachusetts regardless of no-fault."[9]

A compulsory property damage no-fault provision was added in 1972. The three options under this provision apparently track those in the proposed Uniform Motor Vehicle Accident Reparations Act (UMVARA) (see page .) The options are:

- coverage permitting recovery without regards to fault;
- coverage permitting recovery only if the insured can show the other driver is at fault;
- no coverage except protection against potential lawsuits, which would be very rare.

No record of the Massachusetts experience under the

property damage law could be found for inclusion here.

Florida

Florida's no-fault law, the second to become effective, inevitably has been compared with Massachusetts. Florida's law provides more no-fault benefits, including medical costs and 85 percent of wage losses up to a $5,000 maximum. Florida's threshold of $1,000 is higher than Massachusetts' $500. (In both states, lawsuits are also permitted where death, dismemberments, disfigurement, loss of certain bodily functions, or certain fractures occur).

One of the first analyses of the results of Florida's no-fault law was done by Joseph W. Little.[10] He divided data from the claims files of two Florida insurance companies into two subsamples: (1) an exhaustive sample containing every closed personal injury claim, and (2) a major cases sample containing only the more serious cases. The data from both samples indicated the anticipated redistribution of the types of claims filed. The pre-no-fault split where tort cases were at least half of the claims gave way to a situation where tort cases were only 5 to 15 percent of the total (the 15 percent applies to the major cases sample). First-party personal injury protection (PIP) claims greatly outnumbered the tort cases in 1972. Because all of the major claim cases had probably not been filed when the study was done, Mr. Little was unable to evaluate the impact of no-fault on the courts. However, from the data available, no-fault evidently produced some of the desired effects. The time delay between a crash and initial receipt of benefit payments was shortened, which suggests more economy in processing, as does reduction in the presence of lawyers from the process."[11] Obviously, however, this analysis was written too soon after the institution of no-fault to allow definitive conclusions.

A later and more revealing study was made by the Automobile Insurance Study Section of the American Risk and Insurance Association. Insurers representing about 65 percent of the Florida private passenger automobile insurance market supplied incurred accident-year experience for 1971 and 1972 for the study. The results of this study indicated that while Massachusetts experienced a 52 percent reduction in pure premiums (i.e., accident costs) after introduction of no-fault automobile insurance, Florida actually experienced a 10 percent increase.[12] The reason for this, according to the authors, is that while the reduction in tort claim frequencies, 71 percent in Florida and 75 percent in Massachusetts, were quite similar, Florida's reduction produced a savings of only 24 percent over the preceding year's incurred dollar losses.[13] This savings was inadequate to finance the add-on benefit costs provided by PIP amounting to 42 percent of the prior year's losses. One of the reasons for the large increase in add-on benefit costs is that Florida experienced a 15 percent increase in drivers covered by insurance under the new law (Massachusetts experienced only a 3 percent increase since insurance was compulsory even before the no-fault law).[14]

There are several shortcomings in the Association study, some admitted, some not, which are important in weighing the impact of the results. First, medical payments insurance was completely ignored. Bodily injury claims before no-fault were compared to bodily injury and PIP claims after. Many individuals, however, surely carried medical payments insurance before the no-fault law and dropped it when they were required to carry the PIP coverage, just as they have in Texas. Consequently, the net increase in claims payments would not have been as large as the Florida study suggested. In fact, neither total-claims frequency nor average-claims cost would have varied to the extent indicated had medical payments coverage been included.

The study also ignored the subject of expense ratios. A 71 percent decrease in tort-claim frequencies could result in lower claims-adjustment costs and thus lower expense ratios. Only the loss portion of the premium dollar was considered in the study.

Possible reductions in overall plaintiff lawyers' fees and resultant increases in net benefits to injured victims was another factor that was not considered in the study. Even if, all factors considered, there was a 10 percent increase in premiums after no-fault was enacted, there might also be a 20 percent increase in net benefits received by injured victims. In that case, actual cost would not have increased, but decreased, in terms of benefits purchased. This subject is considered in more detail in the next chapter.

There was no mention of other variables that might have affected the Florida results. Changes in other laws affecting automobile accidents—i.e., comparative negligence, guest statutes—or in driving habits were not discussed. The question thus remains: were the changes in claim frequency and severity detailed by the study attributed solely to the no-fault law or were other factors important?

Finally, the findings were derived from a sample representing only 60 percent of the total market. Furthermore, experience was gathered after the no-fault plan was in effect only 15 months. The diversity of forms, rates, statistical plans, and reporting agencies made the collection of a body of reliable data very difficult, prompting the authors to conclude that "while the findings reported in the following exhibits are probably quite credible so far as the direction of change is concerned, the extent of indicated change is subject to the caveats implied by the lack of definitive, fully developed data."[15]

A common deficiency which has become evident during the conduct of this study—lack of satisfactory data in the area of automobile insurance—is further pointed out by the authors in their final conclusions. "Perhaps the experience in both states (Massachusetts and Florida) will ultimately illustrate that the quasi-science of no-fault cost prediction

requires a much larger and broader data input than that which currently can be provided by the statistical resources of insurers and state motor vehicle departments."[16]

New York

The New York no-fault law has not been in effect long enough to yield any conclusive results; however, there have been some interesting events associated with its implementation. To insure that the move to no-fault brought about substantial savings in the prices paid by New Yorkers for personal injury insurance, the no-fault legislation contained a requirement that certain rate reductions be made at the inception of the new no-fault system. For basic no-fault plus $10,000/$20,000 (10/20) bodily injury liability, the legislature mandated at least a 15 percent reduction from the rates paid for 10/20 bodily injury plus $1,000 medical payments under the tort liability system. The statute also required an additional 5 percent reduction in the case of a person who opts for the $200 no-fault family deductible. The average rates approved by the Insurance Board and implemented February 1, 1974, provided an average reduction in rates for basic no-fault plus 10/20 bodily injury of 19.2 percent. For private passenger cars, the average rate reduction was 18.2 percent. For commercial vehicles, the reduction was somewhat larger. In the case of those persons electing the $200 deductible, average reduction came to 24 percent.

Recently, however, Policy Research Project participants were informed that the New York Insurance Board had approved a rate hike. It is not yet clear whether that hike provided for an increase in total premium rates or on the rates paid for no-fault coverage. In the final analysis, of course, actual claims experience will determine the rates and not the desires of the legislature or insurance department.

Summary

The record of actual experience with no-fault automobile insurance is slow in coming and complicated and often incomplete when available. The limited experience of three states has been reviewed. That in other states has not yet been recorded or researched.

One problem in researching the actual experience in other states is that, while figures and statistics are frequently used by both proponents and opponents of no-fault, both sides generally neglect to present the entire statistical story. Instead, each quotes only those statistics which favor its point of view. Also, it is interesting to note that, although no-fault proponents suggest four or five benefits which will be derived from no-fault laws–with the emphasis on compensation for all victims–the overwhelming concern in most discussions appears to be the possible cost savings. State Insurance Commissioner Ryan of Massachusetts wrote in 1971 that "for the most part legislative support (of no-fault) depended on a single factor–the hope, since established as a fact, that the plan would cut automobile insurance costs."[17]

FOOTNOTES

[1]Calvin H. Brainard, "Florida; Land of Rising Costs in No-Fault", *Trial*, published by the American Trial Lawyers Association, 10:31ff, January-February, 1974.

[2]Kentucky Legislative Research Commission, *Legislative Hearing, No-Fault Insurance*, Informational Bulletin No. 103, Frankfort, Kentucky, August, 1973, p. 79.

[3]State Farm Insurance Co., "A Watershed Year for No-Fault", *State Farm Year, 1972*, p. 28.

[4]American Mutual Insurance Alliance, "Focus on No-Fault in 1973", *Journal of American Insurance*, Winter, 1972, p. 31.

[5]Paul Gillespie and Miriam Klipper, *No-Fault; What You Save, Gain, and Lose with the New Auto Insurance*, New York: Praeger, 1972, p. 101.

[6]"How No-Fault Works in Two States", *U.S. News and World Report*, volume 74, number 11, March 12, 1973, p. 40.

[7]Gillespie and Klipper, p. 95.

[8]Texas Association of Insurance Agents, *National No-Fault Conference*, July 22-23, 1971, remarks by William Donahue, p. 46.

[9]Kentucky Legislative Research Commission, p. 79.

[10]Joseph W. Little, "How No-Fault is Working In Florida"; *American Bar Association Journal*, volume 59, September, 1973, pp. 1020-1024.

[11]Little, p. 1023.

[12]Calvin H. Brainard, and John F. Fitzgerald, "First Year Cost Results Under No-Fault Automobile Insurance; a Comparison of the Florida and Massachusetts Experience," *Journal of Risk and Insurance,* 41: March, 1974, p. 37. This ten percent increase occurred while a 15 percent mandated rate decrease was in effect, causing an extraordinary jump in loss ratios and thus a disasterous year for many insurers. See *Bests Executive Data Service 1974* and Bernard L. Webb, "The Consumer's Interest in National No-Fault Automobile Insurance", a statement submitted for the Congressional subcommittee hearings on S.354, July 25, 1974, for comment.

[13]Brainard, March, 1974, pp., 36-37.

[14]*Ibid,* p. 37.

[15]*Ibid,* p. 31.

[16]*Ibid,* p. 38.

[17]*American Bar Association Journal,* volume 57, p. 431.

CHAPTER V

PROSPECTS FOR TEXAS

In previous chapters we have examined the theory of no-fault automobile insurance, several of the problem areas surrounding its implementation, and the limited experience of a few states which have enacted such laws. This leads us to several important questions concerning the applicability of no-fault automobile insurance to Texas drivers:

- How did Texas accident victims fare in recovering their losses under the system existing prior to September, 1973?
- What are the likely effects of recent changes in the law with respect to the ability of injured parties to collect and the cost of automobile insurance?
- What are the likely costs and benefits of a no-fault law for Texans?

CHARACTERISTICS OF THE TEXAS SYSTEM

Before analyzing the possible impact of a no-fault law on Texas drivers, the similarities and differences between the Texas situation and that in other states should be examined. Is Texas experiencing the same problems in the same degree as other states? Can the actual experience of states with no-fault laws be readily projected to the Texas situation? To find answers to these and similar questions, a survey was made from a randomly selected group of individuals who had suffered injuries in accidents. Next, primary data concerning Texas drivers and their insurance were collected from various state agencies. Finally, those parts of previous studies which dealt specifically with Texas were examined. It should be mentioned that the system examined here is the one in existence before the fall of 1973, when several changes in the law became effective.

Texas Accident Survey

For the survey, approximately 1,100 names were drawn at random from the microfilmed accident files of the Department of Public Safety in Austin. Only those persons who reported injuries in the calendar year 1971 were selected, because these cases would probably have had sufficient time to complete delayed claims settlements of litigation.

Of the 1,100 questionnaires sent, 146 were returned with no forwarding address, and so were not delivered. Another eight questionnaires were returned reporting the person addressed had sustained no injuries. Only 153 persons who had been injured responded and many of these responses were incomplete, with several questions left unanswered in most instances. Therefore, we cannot draw conclusive, statewide generalizations from the data presented here, primarily because of the small sample necessitated by available research resources and because of the limited answers on many of the questionnaires which were returned. However, some interesting insights are afforded by the responses.

The survey questionnaire was basically modeled after that designed for the Department of Transportation's 1969 nationwide study of automobile insurance. Some variations should be noted. For example, in the final question, which seeks a statement of preference between two types of insurance systems, no mention was made of the term "no-fault" because of the emotional connotation, both pro and con, derived from it. Instead, two different systems were described without labeling either of them. The questionnaire is reproduced in Appendix B.

While no attempt is made to apply universal validity to the resulting data, some of the calculations nonetheless indicate a reasonably close approximation to figures derived from the larger more comprehensive study conducted by the DOT. For instance, 84.3 percent of sample respondents carried liability insurance at the time of their accidents. DOT and Texas Department of Public Safety figures indicate approximately 79 percent of Texas drivers are covered by liability insurance.

Promptness of Claim Settlement

It has been argued that insurance systems under tort liability are inefficient because settlement of claims by insurance companies takes much longer than necessary. From the survey, which compared the total amount of claims with time needed for settlement, larger claims are shown to take longer for settlement than smaller claims. Since only 45 of the 153 responses could be cross-tabulated, these figures are hardly conclusive, but 14 of 23

or 60.9 percent of the claims for more than $1,000 took more than 30 days to settle. Eighty percent of the claims for less than $500 were settled in less than 30 days.

Adequacy of Claim Settlement

Another criticism of the current system is that large claims are undercompensated and smaller claims are overcompensated. To test the applicability of this statement to Texas drivers, responses giving the amounts of total loss experienced were cross-tabulated with responses specifying the amounts received in settlement from insurance companies. Here is a summation of the survey results describing levels of compensation:

TABLE V-1

AMOUNT RECEIVED FROM AT FAULT PARTY

Amount of Total Loss	0	1-100	101-500	501-1000	Over 1000	
0	2	0	0	2	1	5
1-100	1	2	1	0	0	4
101-500	4	2	7	2	3	18
501-1000	6	0	2	0	7	15
Over 1000	1	1	1	0	15	18
	14	5	11	4	26	60

Since the questionnaire treated all amounts over $1,000 in one category, it is not possible to estimate the degree of undercompensation of large losses. However, it can be seen from this table that smaller claims were quite often overcompensated. Seven of 15 (46.7 percent) with losses amounting to $501-1,000 received more than $1,000 in settlement. Five of 18 (27.8 percent) of those with losses between $101-500 received more than $500. Six more received less than $100, however. Noteworthy is the fact that of the 37 respondents who experienced losses between $1-1,000, only 9 received settlements in the same range as their economic losses. This suggests that the tort system tends to subsidize the payment of excess benefits to some victims at the expense of other policyholders.

Court Congestion and Costs

Court congestion and high legal costs are another criticism of the tort system of automobile liability insurance. The bodily injury accident victim survey showed, however, that only about 22 percent hired an attorney. Lawsuits were filed by only 12.1 percent of the respondents.

These figures represent percentages of a sample of individuals who received bodily injuries in accidents, regardless of fault. In fact, about two-thirds of these individuals said the other driver was at fault, and about one-third actually received payment from the other driver or his insurance company. By comparison, the U.S. Department of Transportation study of paid bodily injury claimants in Texas in 1969 showed that 28.9 percent were represented by an attorney and 8.9 percent filed suit.[1]

In those cases where attorneys were hired, however, claimants nationwide received an average of 72.7 percent of the gross payment with their attorneys receiving the

remaining 27.3 percent.[2] (The Texas figures were 81.8 percent and 18.2 percent respectively, but the authors believe these figures to be incorrect due to some incorrect assumptions applied to the calculations.)[3]

There is little available information on the amount of court congestion in Texas, let alone the contribution of automobile liability cases toward that congestion. In February, 1973, the Texas Civil Judicial Council conducted a poll of district and county judges and clerks to determine the impact of several matters of legislative importance, one of which was personal injury cases involving automobile accidents. Over 86 percent of all district courts and 80 percent of the 310 county courts responded to the poll. The findings showed that for the year 1972, 4.5 percent of district court cases and 6.7 percent of county court cases involved automobile accidents.[4]

It would be helpful to have such statistics as the length of waiting times until trial in various locations, the average size of judgement, and others. The DOT studies and our own survey do substantiate the opinion that smaller claims tend to be settled more quickly than larger claims. Consequently, it is probably the larger claims which are going to court.

It appears then that if there is any serious degree of court congestion in Texas, the amount which could be eliminated by a no-fault automobile insurance system would be relatively small for two reasons: first, a relatively low percentage of court cases involve automobile accidents, and second, those that do are probably the large cases which would still be in the courts under most forms of modified no-fault laws.

Public Opinion on No-Fault

An atttempt was made to elicit preferences as to the most desired automobile insurance reparations system. In this regard, it must be emphasized that there are limitations in survey questions regarding reparations systems. First, the respondent may not understand clearly the way alternative systems work. It is impossible to give more than a cursory description in a questionnaire. Second, questionnaires themselves can be biased through the manner in which the questions are asked. Leading words can elicit desired responses. Third, the sample population can be insufficient or biased. The researcher has always to wonder how the non-respondents would have answered. Fourth, what people say they will do and what they actually do are not always the same. For example, they may respond that, given first-party benefits after an accident, they would not hire an attorney nor file a lawsuit. However, when an accident occurs, they may actually do just that.

Our survey, although carefully designed, is no less subject to these limitations than most others. The survey population consisted only of those individuals who had sustained bodily injuries in automobile accidents in 1971. While the number of respondents was too small for the results to be statistically indicative of statewide experience, the results are presented as an indication of one group's opinion. It is recognized also that there have been many public opinion surveys taken in the past several years regarding no-fault automobile insurance.[5] The latest was conducted for Sentry Insurance by Louis Harris and Associates and the Wharton School.[6] The interesting point is that results have varied from anti-no-fault to pro-no-fault with no clear indication of public desire. If the actions of state legislatures are any indication, the feelings appear to range from pro-no-fault if sizable premium savings are involved to apathy or anti-no-fault if no such savings are forecast.

In our survey, an attempt was made to remove any bias either for or against the term "no-fault" by not using it. Instead, two systems were very briefly described, one an essentially pure no-fault system, the other a tort liability system. Since most no-fault laws are modified, retaining the tort liability concept, it would probably have been useful to broaden the question. But it probably would have been so complex and confusing as to nullify the results unless the questionnaire were made much longer and people personally interviewed.

Given a choice, then, between an essentially pure no-fault system or the tort liability system, slightly more than half of our sample of 148 said they preferred the "fault" system. About one-fourth said they preferred the "pure no-fault" system. Another one-fifth were not sure. There was no tendency for those who were at fault to prefer the "fault" system. However, the greater the loss, the greater was the instance of preference for the tort system.

The Sentry Insurance National Opinion Study conducted 90-minute interviews with 2,462 individuals nationwide concerning consumer attitudes toward automobile and homeowner's insurance. Their results showed that more than half wanted a no-fault insurance law.[7] One-fourth opposed it. Interestingly, when the phrase "no-fault" was not used, even more favored an essentially first-party system.[8]

From these results, it is easy to understand why little credence should be put in opinion polls. (To further elaborate, the State Farm poll showed anti-no-fault sentiment while the DOT poll showed pro-no-fault sentiment.) Rather, it is more important to judge a system by its merits and limitations and act accordingly.

RECENT CHANGES IN THE TEXAS SYSTEM: IMPLICATIONS

In August, 1973, several new laws became effective in Texas which caused some significant changes in the

automobile tort liability and insurance systems. The common law doctrine of contributory negligence was abolished in favor of comparative negligence; the restrictive guest statute enacted years ago by the legislature was modified; and a first-party benefits package, labeled personal injury protection (PIP) was made a mandatory coverage subject to rejection under private passenger automobile insurance policies.[9] These laws were all promoted and supported by the State Bar of Texas as a response to criticism that the existing tort system prevented many injured victims of automobile accidents from recovery of their losses even when the preponderance of fault lay with the other party.

Comparative Negligence and the Modified Guest Statute

The effect of the comparative negligence law is to permit recovery by an injured party against another as long as the fault of the other party is as great or greater than his.[10] Under contributory negligence, neither party to an accident could recover against the other unless he were completely free of negligent actions. Under the comparative negligence statute both can collect if their negligence is equal. Otherwise, the least negligent party may recover from the more negligent party. However, in any case the damages allowed are diminished in proportion to the amount of nelgigence attributed to the party recovering. Thus, if two individuals each suffered $10,000 losses and one accounted for 40 percent of the total negligence, he could recover $10,000 less 40 percent, or $6,000. The other party would recover nothing. If both parties were equally at fault in the above situation, each would collect half of his losses.

Under the new modified guest statute, a non-fare-paying passenger other than a member of the family may recover his losses from the negligent driver of the car.[11] Under the previous law, the passenger would have had to show gross negligence or reckless action to collect.

There is no way to predict with accuracy the cost implications of comparative negligence and a modified guest statute. Two of the greatest barriers to effective research in the social sciences stand particularly large here. First, past data under one system must be used to predict future performance under another system. Even though other states' experiences sometimes can be used, seldom are the situations comparable. Second, there is no way to hold all other variables constant while one is changed, as is possible in scientific laboratories. Thus, at best, we can only predict what would have been in 1972 if we had had a comparative negligence law. If we project into 1975, then somehow we would have to negate the effects of variables such as the petroleum shortage, improved highway and automobile safety systems, and even the guest statute and PIP.

The most notable and thorough study to date was made by Cornelius J. Peck, Professor of Law at the University of Washington, in 1959 and published in the *Michigan Law Review.*[12] Professor Peck compared both claim frequencies and total insurance costs in states with comparative negligence with those in states with contributory negligence. First he examined the claims experience of insurance carriers in four states with comparative negligence rules–Arkansas, Georgia, Mississippi, and Wisconsin–and their neighboring states. The frequency of claims per thousand automobiles insured for both personal injury and property damage was examined. Professor Peck then concluded that, "Analysis of these statistics leads to no conclusion, unless it is that an effect of comparative negligence is not observable."[13]

In a similar comparative study of insurance rates, Peck concluded that, "It is possible to say once again that if comparative negligence does affect insurance rates, its effect is not great enough to be observable in the complex of forces acting on the rate level. Indeed, it would not have as much effect as rapid growth of population, increased urbanization, or change to a traffic program with the effective safety record of a neighboring state. Its effect if any, would probably go undetected in the rates and statistics of the insurance industry."[14]

The major limitation of Professor Peck's study was that he had to rely on a time-constant comparison of insurance rates or claims frequency and severity data for different states. The fact is that there are too many uncontrollable variables to accurately attribute higher rates in one state to one variable such as a comparative negligence law. The passage of comparative negligence laws in a few states in recent years has facilitated new studies taking into account variables such as the existence or non-existence of guest statutes, the actual judicial interpretations and thus practices relating to contributory negligence, and variance in the costs and styles of living, among others, which were denied to Professor Peck when he did his studies.

One recent study concluded that "the likelihood of any significant change in automobile liability insurance rates which can be attributed to a change to comparative negligence is slight," particularly, "where courts, attorneys, and insurers have previously settled automobile litigation cases on the basis of comparative negligence, even where contributory negligence is the law."[15] These conclusions followed an investigation of the comparative changes in claim frequency and severity following enactment of comparative negligence laws in two other states. Needless to say, there may very well have been variables at work in those states which make such results inapplicable to Texas. That same study also predicted an increase in rates of approximately 5 percent due to the modification of the guest statute.

Another unpredicted factor was the adoption, along with the comparative negligence and guest statute law, of a new rule of civil procedure[16] that simplified the process of submitting special issues to a jury. The result of this change could tend to cause a higher frequency of awards. At present, there has been insufficient time to ascertain the results of any of these laws on automobile insurance rates in Texas, if indeed it can ever be done.

Personal Injury Protection

In August of 1973, an act (House Bill 143) relating to mandatory coverage for personal injury protection and certain disability and death benefits under a policy of automobile liability insurance, was added to Texas' Insurance Code.

The personal injury protection (PIP) coverage provides optional additional coverage on automobile insurance policies for medical expenses and wage losses up to $2,500 per person per occurrence due to personal injury. Both driver and passengers of insured automobiles are covered. The coverage provides payments from the insured's own insurance company for those medical expenses and loss of income resulting from automobile accidents. However, insurers must include the coverage in all automobile liability insurance policies issued unless it is rejected in writing by the insured. Thus, all policies will automatically include such coverage unless the insured informs the insurer that he does not want it.

PIP vs. Traditional Medical Payments Coverage. The major differences between PIP and traditional medical payments coverage are:

- The new coverage extends the period of covered incurred personal injury protection benefits to three years from the date of the accident. Under most medical payments coverage, the period is only one year.
- The coverage adds benefits for loss of income and the cost of replacement of essential services performed by an injured non-wage-earner. These are benefits not available under regular medical payments coverage.

The PIP Act does not affect the offering of medical payments coverage, disability benefits and accidental death benefits as presently written by Texas insurers.

Is Texas' PIP a Form of No-Fault Insurance? One supporter of PIP called it no-fault automobile insurance when it was passing through the Texas Legislature. However, this law is quite different from the no-fault laws now in effect in such states as Massachusetts, Florida, New Jersey, Connecticut, Colorado, and Kansas. Each of the latter substitutes at least to some degree the right to collect directly from a motorist's insurance company for the right to sue the other driver involved in an accident. For example, the key features of the Personal Injury Protection Plan in Massachusetts are: (1) like medical payments coverage, it is added to the compulsory bodily injury liability coverage; (2) the coverage is the primary source of recovery; and (3) the potential for recovery in a liability action of more than actual economic loss (i.e., out-of-pocket costs and loss of wages) has been restricted.

In contrast to the Massachusetts plan, Texas' PIP does not restrict or limit law suits. It simply provides for add-on coverages for medical expenses and loss of income. The PIP law provides that PIP benefits are payable without regard to the fault or non-fault of the insured, and must be paid without regard to collateral sources of medical, hospital or wage continuation benefits. The only deduction or offset allowed is in the case of a guest who makes a claim against his host. If the guest recovers PIP benefits, which will have been provided because of the coverage furnished on the host vehicle, the host driver is permitted an offset in any liability suit to the extent of PIP benefits received by the guest. An insurer paying PIP benefits is not entitled to any rights of subrogation.

Texas' PIP closely parallels the Maryland Automobile Insurance Reform Act passed in 1972, which became effective January 1, 1973. The Maryland Insurance Commissioner testified to the Texas Senate committee considering the PIP bill that such legislation, in his opinion, would reduce claims because it would deliver prompt payment of up to $2,500 of first-party benefits. U.S. Department of Transportation studies show that in 1969 96 percent of all bodily injury claims could be completely disposed of for $2,500 or less.[17] The implication is that motorists are less likely to involve themselves in litigation of third-party liability claims if they are promptly paid their wage loss and economic bills.

"Pure" no-fault has been described as an insurance system with total tort exemption. Programs with varying degrees of tort exemption are, then, modified forms of no-fault insurance. PIP coverage provides protection without regard to fault, but cannot be classified as a no-fault insurance system any more than the existence of medical payments coverage, comprehensive physical damage and collision coverage (all of which are paid regardless of fault) in a policy would qualify that policy as no-fault insurance.

PIP Effect on Insurance Costs. It is unknown at this time what effect PIP will have on insurance costs in Texas. Before the PIP law became effective, Texas' Insurance Board Chairman indicated that it would not be used in calculating Texas' insurance rates immediately because from a year to several years experience would be needed to set rates. The Chairman did express a belief that the plan will help reduce insurance costs in the long-run. The current rate for $2,500 of PIP is $22 for the 1A classification except in Harris and El Paso counties, where it is $23. This

compares to corresponding rates of $15 and $16 for $2,500 of medical payments insurance. These rates are based on actuarial estimates, however, rather than experience. It will be several years, at the minimum, before costs based on actual experience will be ascertainable.

Lower premiums for bodily injury liability insurance are possible from the institution of PIP in Texas, but only if certain conditions are met. First, a large percentage of the driving population would have to buy PIP coverage on a voluntary basis. Second, those injured in accidents would have to refrain from bringing a claim or suit against the other party, since there is no legal restriction on suits against the other party whether or not a person collected from your insurance company. No information is presently available whether these two conditions are being met. At the same time, of course, other factors are at work on the bodily injury premium—changes in frequency of accidents because of reduced speed limits, less driving, or related developments; changes in claim size because of the use of safety belts and other safety equipment, or increased hospitalization costs; the new comparative negligence law with the modified guest statute; and new trial procedures. Because of these other factors, it will be difficult indeed to isolate the effect of the new PIP law even when the experience statistics are collected.

PROBABLE EFFECTS OF NO-FAULT AUTOMOBILE INSURANCE FOR TEXAS

Two recent predictive cost studies have been made regarding no-fault automobile insurance: the Milliman and Robertson study for the National Association of Insurance Commissioners (NAIC) at the request of the U.S. Senate Commerce Committee, and the Institute for the Future study, conducted under a grant from the National Science Foundation.

The Institute for the Future dealt with various potential long-range impacts of different no-fault plans. The model, which included some costs factors, projected results to 1984, based on various assumptions about changes in driving habits, safety devices, social income guarantee schemes, and similar social factors.

The NAIC study was an effort to overcome a major obstacle to legislative progress on no-fault insurance in various states—the controversy over the cost implications of particular bills. In August, 1972, the NAIC decided to sponsor an independent and objective costing program and the actuarial firm of Milliman and Robertson, Inc. was retained to develop a computerized model capable of evaluating the cost implications of a wide variety of different no-fault proposals. The model was also to be designed to deal with state-by-state variations in automobile accident injury patterns and in the existing tort liability automobile insurance system.

Early in 1973, the U.S. Senate Commerce Committee, which was evaluating Senate Bill 354, the proposed National No-Fault Motor Vehicle Insurance Act, requested the NAIC to "cost" the bill based on the experience in five states, including Texas. The contract between the NAIC and Milliman and Robertson, Inc. contemplated the costing of this bill.

The Cost-Estimate Study

The primary goal of Milliman and Robertson's computer model was to generate a single figure: the percentage increase or decrease in the average personal injury automobile insurance premium expected to result from enactment of any given no-fault bill.[18] The main goal of the overall costing system was broader—to convey an understanding of the study and its conclusions as the probable cost implications of the bill. Another goal was to generate useful information to facilitate analysis of the study and of the bill.[19]

Basically the cost-estimate study postulates a distribution of persons injured in automobile accidents. The cost of these injuries is evaluated for the two reparations systems—tort and no-fault—and total costs are then compared. Using a base of 100,000 hypothetical injuries, the study seeks to determine the average insured cost per vehicle of these injuries under both the present and proposed insurance systems. It systematically determines which of the 100,000 injuries will be compensated and how much compensation they would receive under each reparations system. Six variations of S. 354 were costed (see Table V-2 at the end of this chapter). Injuries were classified according to various characteristics such as: (a) type of accident, (b) type of vehicle, (c) role of the injured person, (d) seriousness of the injury, (e) fault status, and (f) insured status. Compensable amounts were made to vary according to similar injury characteristics. Thus, by accounting for the important sources of variation in compensable injury frequency and average cost between present and proposed systems, it is possible to obtain an indication of the cost change associated with a particular no-fault reparations system proposal.

Injuries are distributed by types and numbers of vehicles involved and by severity. The model then determines to what extent these injuries would be compensated under the first-party benefit provisions in the proposed no-fault legislation and to what extent under residual tort rights. The costing system also takes into account such factors as eligibility for first-party benefits according to vehicle type, percentage of vehicles insured, provisions of the proposed assigned claims plan, percentage of injuries in the state involving out-of-state vehicles, and percentage of injuries occurring outside the state.

In addition to bodily injury liability coverage, the model

also recognizes the presence of uninsured motorist and medical payments coverages under the current system, and makes assumptions about the extent to which they will be continued under the proposed system (see Appendix V-1 at the end of this chapter). Changes in loss adjustment expense levels are also taken into account.

Sources of Data. The primary data source from which variations in injury costs and distributions were obtained was the 1969 closed claims study conducted by the U.S. Department of Transportation. Other injury frequency data were gathered from sources such as the Federal Highway Administrations' *Fatal and Injury Accident Rates on Federal Aid and Other Highway Systems 1970*, the National Highway Traffic Safety Administration's National Accident Summary File, the National Safety Council, and the National Center for Health Statistics.

Results of the Cost Study for Texas. The cost estimate study yielded the results illustrated in Table V-2 for Texas. The figures represent predicted percentage changes in the average total automobile premiums, the average personal injury premium, and total personal injury premiums for different no-fault plans when compared with the tort liability insurance system in effect prior to August, 1973.[20] The Milliman and Robertson firm cautions observers that the results reflect actuarial judgement and statistics applied to a computerized model. It recommends that the study results *not* be used except in conjunction with certain caveats expressly stated in the study (see Appendix V-2). For example, it should be noted that the costing estimates do not project costs by class of insureds or territory, but rather represent only a statewide average. The actual effect of a change to no-fault may vary considerably by class and territory, depending on benefit levels, tort limitations, and amount of subrogation or loss shifting retained.

Analysis of the Milliman and Robertson Study

Milliman and Robertson make every effort to warn against the use of its predictive cost results in the absence of the caveats listed. There are, however, some questions and criticisms of the study that have been raised by experts in the field of automobile insurance even in light of these caveats. The seminar had access to three analyses of the Milliman and Robertson study. Two of the analyses were contained in statements made to the Senate Judiciary Committee by two professors of insurance, Calvin H. Brainard of the University of Rhode Island, and Bernard L. Webb of Georgia State University. The third analysis was done by the Inter-Association Actuarial Group (IAAG) representing the American Insurance Association, American Mutual Insurance Alliance, and the National Association of Independent Insurers. Professors Webb and Brainard, and the Inter-Association Group emphasize that their criticisms are in no way intended to question the competence of the Milliman and Robertson actuaries; rather they serve simply to point out the potential weaknesses in the study.

Data Base. Webb said that one of the greatest weaknesses of the Milliman and Robertson study is its use of statistics generated under the tort system as its data base.[21] (See *Sources of Data*)

Webb asserted that the data sources lack crucial information concerning the real levels of economic loss and collateral source recovery under the tort system. This information gap, he feels, leads to an understatement of economic losses which would be incurred under no-fault. Webb also believes the DOT data overstates general damage payments under the tort system. The result of the use of these questionable data items is an overestimate of the cost savings under no-fault.[22]

In his statement before the Senate Judiciary Committee Calvin Brainard also expressed concern over the data base used by Milliman and Robertson. Statistics gathered by Brainard from two Massachusetts state authorities for the year 1969 show 33 percent more tort claims per 100,000 injuries than are reflected in the Milliman and Robertson data. Since the total estimated costs for both systems were derived by multiplying the number of assumed claims per 100,000 injuries by an assumed cost per claim, it is possible for even a small error to significantly affect the predicted results.[23]

The Inter-Association Actuarial Group in its review of the Milliman and Robertson study expressed concern about the death statistics used in the study. The death ratios which serve as a starting point for statistical inputs into the model are taken from data showing the split between rural-urban deaths for one year of accident experience. The Inter-Association Group suggests that more than one year's experience might offset chance variations which may have occurred during the one particular year chosen.[24]

Our own analysis has shown that the death ratios used for Texas are subject to question. Milliman and Robertson used a death ratio (fatalities as a percent of total injuries in all automobile accidents) of 2.1 percent for Texas while Department of Public Safety statistics show that ratio to be approximately 3 percent. Use of the Department of Public Safety statistics would significantly reduce the predicted cost savings of no-fault insurance for Texas.

Actuarial Assumptions. The lack of a complete body of data forced a great reliance on actuarial assumptions. The Milliman and Robertson report states that "an important part of the cost estimating system is the process of making assumptions. . .to the maximum extent feasible, these assumptions are based on relevant data or other objective information, but actuarial judgment is also an important factor in some cases."[25]

The Inter-Association Actuarial Group states that:

> The necessity of actuarial assumptions is not symptomatic

> of indolence. Rather assumptions are necessary because, in many cases, no one has had prior occasion to make objective measurements, and because costing involves forecasts of how people and institutions will change their behavior in response to a new reparations system and a changing legal environment. It is important to remember that the way in which actuarial judgment is exercised in making assumptions can have a very important influence on final comparative results.[26]

The IAAG does point out, however, that an assumption which proves to be inaccurate can have a significant effect on the cost results. One such assumption could be the insured ratio. For example, Milliman and Robertson assume that the compulsory aspects of S.354 would have increased the insured ratio in Kentucky from 68.2 percent to 84.6 percent. This assumed change produced a 1 percent indicated savings while little or no change would have produced a 9 percent indicated increase in system costs. Variance in other assumptions which could have a great effect on the cost estimates are those concerning the distribution of fault in accidents, the psychological threshold factor (i.e., the willingness of those who have recovered their out-of-pocket losses to forego tort claims), and the tort propensity factor (the aggressiveness with which injury victims pursue rights of action in tort).[27]

Webb has questioned a number of the Milliman and Robertson assumptions for Texas. He points out that in the actual calculation of the model, Milliman and Robertson assumed that first-party medical payments coverage in Texas totaled 24.1 percent of the payments under bodily injury liability coverage for private passenger cars. Statistics published later by the State Board of Insurance indicated that such medical payments losses are only 18.7 percent of private passenger bodily injury losses. He further questions the actual amount of medical payments shown in the model and asserts that this amount "would only be correct if private passenger bodily injury payments constituted 93.7 percent of all bodily injury payments, including commercial vehicles. The Texas publication (Board of Insurance Statistics) indicates that private passenger bodily injury payments constitute only about 68 percent of the total."[28] Correction of the Milliman and Robertson Texas calculations for these two errors, according to Webb would drop the projected savings from 17 percent to 9 percent. Webb also questions the 15 percent average deduction for income taxes in wage loss payments. He says that since S. 354 provided that 15 percent is the maximum deduction for income taxes, the average should be lower and therefore, the costs of no-fault higher.[29]

Interpretive Differences. A major problem with no-fault cost predictions is that they can be interpreted in varying ways. Brainard refers to the use of statistics by no-fault proponents which show great increases in the number of persons paid and decreases in cost resulting from no-fault implementation as "statistical hypnosis."[30] He states that total costs are actually greater but are spread over a vastly increased insured driving population. The costs saving, then, would result from the compulsory requirement in S. 354 and not from the no-fault concept itself.

Brainard does not actively contest the projection that the number of persons compensated from no-fault could increase by as much as 100 percent. He does, however, protest the use of that statistic without the accompanying revelation that the average benefit paid to victims would drop by as much as 40 percent.[31]

There are other instances of questionable interpretation which have aroused protests not only from critics but from the Milliman and Robertson firm itself. The *Washington Star News* of June 22, 1973, contained an article which many persons interpreted as showing a potential for 25 percent to 40 percent savings in total automobile insurance premiums from passage of no-fault law. A letter from Mr. Frederick W. Kilbourne, a Milliman and Robertson official involved in the study, to the Editor of the *Star News* claimed that the article was indeed misleading and that their projections referred only to the personal injury portion of the automobile premium and not the total premium.[32] The State Bar of Texas also labeled the Milliman and Robertson predictions as misleading in a full-page advertisement published in the February, 1974, issue of *Texas Monthly.*[33] The Milliman and Robertson firm, however, should not be held responsible for such apparent misinterpretation, as it continually states that the findings are not to be used in the absence of the stated caveats. In addition, it readily admits that the lack of a complete data base makes their predictions "subject to a high degree of uncertainty as well as being very susceptible to misinterpretation."[34]

Relative Savings Among Driver Classifications. The IAAG points to a shortcoming in the way the cost estimates are stated. The Milliman and Robertson estimates represent an average for all vehicles on the highway–trucks, commercial cars, taxicabs, motorcycles–and does not express the costs savings which will be associated specifically with private passenger cars. The general driving population, composed primarily of private drivers, would not realize the full savings estimated by the model and might, in some cases, experience a cost increase according to this actuarial group.[35]

Webb also points to the absence of a breakdown in estimates per vehicle class as a weakness of the study. In addition, he suggests that to project average savings statewide without consideration for rural-urban differences is misleading. Though savings may be possible on a statewide average basis, the rural driver may very well experience an increase in costs while the urban driver experiences a savings.[36] Milliman and Robertson do, however, list the failure to incorporate territorial relativities into the model as one of the caveats.

Predictive Ability. The final criticism to be discussed here is the difference between the model's predicted results and actual results in the states of Florida and Massachusetts. The *Report of the Senate Commerce Committee on S.354* (page 37) included a comparison of predicted and actual results:

	Massachusetts	Florida
Predicted Savings	15%	24%
Actual Savings	26%	40%

Brainard, however, discounts these dramatic savings levels. In Massachusetts, he says, the savings "was due almost entirely to the totally unexpected and, as yet, unanalyzed drop in total claims from 117,813 to 70,900, or by a 40 percent decrease. Paradoxically, far fewer persons collected under no-fault than under the preceding tort system. On the contrary, the predictive model shows for Massachusetts an increase of 39 percent in total claims. There would therefore appear to be some kind of serious aberration in the model's claim propensity factor."[37]

In the case of Florida, Brainard asserts that the 26 percent savings is in the price paid by insured motorists and not the cost incurred by insurers. He suspects that the 26 percent savings is entirely attributable to legislative mandate and in no way reflects insurer's costs.[38] Consequently it is only a short run illusory savings.

Summary. The criticisms discussed here suggest that the Milliman and Robertson model is not a precise predictor of costs under no-fault. Because of questioned assumptions as well as caveats expressed by the authors themselves, the model must be used with great caution and with full awareness of its limitations in any attempts to predict costs under any proposed no-fault law.

The value of the model should not be overlooked, however, simply because it has limitations. Perhaps the Inter-Association Actuarial Group expresses best the value of the Milliman and Robertson study:

> The model has been constructed in a professionally competent manner. The data sources used are probably the best available. We have noted several technical criticisms, and have called attention to the absence of separate cost estimates for commercial versus private passenger cars as a potential source of misinterpretation.
>
> Without question, actuarial assumptions play a vital role in determining final cost outcomes. In some cases alternatives and equally supportable assumptions will produce significantly different answers. For this reason, the Group cannot categorically support all results obtained from the Milliman and Robertson model.
>
> Notwithstanding the limitations described and the technical criticisms and comments offered in this review, Milliman and Robertson, Inc. has made a valuable contribution to understanding the cost implications of no-fault automobile insurance. Not only does the Model provide a systematic first approximation of costs, but it also provides explanations in a way that promotes specific criticisms rather than vague expressions of general dissatisfaction. In short, the Milliman and Robertson Model provides useful if not always conclusive cost information.[39]

Proposals for Improved Predictive Systems

The preceding section has detailed a number of criticisms of the Milliman and Robertson Cost Estimating Study. There are several suggestions offered by Webb, Brainard and the Inter-Association Actuarial Group for improving the Milliman and Robertson efforts. In addition, suggestions are made here for improving no-fault cost predictive efforts for Texas.

Inter-Association Actuarial Group. The most extensive suggestions for improvement have come from the IAAG. In their review of the Milliman and Robertson Model, the IAAG offers these suggestions:[40]

1. In spite of an expressed caveat of Milliman and Robertson, there is danger that the study results will be misinterpreted because of a shortcoming in the way the cost estimates are stated. All of Milliman and Robertson's cost estimates represent an average for the total mix of vehicles on the highways, including trucks, commercial cars, taxicabs and motorcycles. No separate expression of costs associated with private passenger as distinguished from commercial cars and other vehicles is made. Percentage changes in average premiums may be quite different among these vehicle groups, particularly when loss transfers between companies are restricted. There is some reason to believe there would be a shift in insurance costs from commercial vehicles to private passenger cars under some no-fault bills. Moreover, the primacy of Workmen's Compensation benefits would reduce no-fault costs unevenly across these vehicle groups.
2. Beginning with the actual number of urban and rural deaths in a given state, death ratios are applied to allocate deaths by vehicle type and injury/death ratios are applied to allocate injuries by type of vehicle based upon the allocation of deaths. This is the basic process by which injury and death is distributed over the 100,000 injuries in the Model and the basic way in which state variations in injuries and death can be reflected. Splits between urban and rural deaths by state are taken from one year of accident experience. It is suggested that more than one year of experience be used because chance variation could affect the year-by-year splits, particularly in low population density states.
3. Milliman and Robertson's estimates of the number of death claims as a percentage of all claims under the present tort system do not track well with actual experience. The DOT closed claims study data showed that approximately one percent of all bodily injury claims involved death cases. However, in applying their costing model to the federal standards no-fault motor vehicle insurance act, Milliman and Robertson's projected death percentages for the present tort system were much higher, ranging from 1.6 in California to 2.8 in Kentucky.

   The discrepancy in the estimate of death cases can result in a serious cost error, particularly under legislation that provides substantial survivorship benefits. Calibration

of the model so that projected death cases better approximate actual experience seems indicated.

4. The ratio of general damages to total bodily injury liability payments has an important influence on no-fault costs. The higher the percentage of general damages, the greater will be the relative cost savings from their restriction. Milliman and Robertson used the consolidated 19 state data from the DOT claims survey in spite of the fact that there are substantial differences in the ratio of general damages among the 19 states. They expressed the belief that differences among states were probably caused by chance since general damages can be quite volatile.

   The Group's analysis of the DOT data has produced evidence to suggest that there are real differences in the ratios of general damages to total damages among states. To reduce the possibility of chance variation, general damages associated with serious cases were parceled out; then the non-serious residual were compared with non-serious total damages by state.

DOT DATA–GENERAL DAMAGES BY STATE

State	Ratio Non-Serious General Damages to Non-Serious Total Damages
Michigan	.47
Minnesota	.52
California	.53
Texas	.54
Wisconsin	.57
Illinois	.60
North Carolina	.60
Missouri	.63
Ohio	.63
Pennsylvania	.63
Indiana	.65
Massachusetts	.65
Georgia	.66
Florida	.67
New Jersey	.67
New York	.67
Connecticut	.69
Colorado	.70
Washington	.79

   These data show that there are differences among the 19 states surveyed. Because these differences will have an effect on cost estimates in some cases the Group believes the Milliman and Robertson Model should give them some credibility.

5. Loss of Services–Subject to variation depending upon the no-fault plan being costed, the Milliman and Robertson Model shows roughly that 20-25 percent of those who are eligible for no-fault benefits will receive loss of service benefits. Preliminary no-fault experience of several companies represented in the Inter-Association Actuarial Group shows that less than 5 percent receive loss of service benefits. The reason for the disparity may be because Milliman and Robertson significantly increased the loss of service frequency actually observed from tort data, in anticipation of greater use as a specified benefit under no-fault.
6. Erosion of Medical Thresholds–There exists the potential to deliberately incur medical expenses sufficient to penetrate medical thresholds and acquire a right of action in tort. There is evidence that this activity is already under way in Florida. Perhaps an assumption similar to the Psychological Threshold Factor, although opposite in effect, should be included in the model to account for possible erosion of medical thresholds.

Brainard and Webb. In their statements before the Senate Judiciary Committee, Brainard and Webb offer limited suggestions for improvement. Brainard suggests that the predictive efforts of a number of actuarial bodies might be pooled to provide for much more success than the efforts of a single actuarial firm.[41] Webb recommends the incorporation into future predictive efforts of factors which will account for variations in insurance costs and driving conditions among rural and urban areas. In addition, he speaks to the need for variation between private passenger and commercial vehicles discussed earlier under the IAAG suggestions.[42]

Additional Proposals. Several suggestions for improving future predictive efforts for Texas arose during the course of this project. It was our objective to incorporate these suggestions into the Milliman and Robertson model and actually perform the computer runs to determine changes in the results; however, a number of factors prevented this. Discussions with Milliman and Robertson actuaries confirmed our belief that these suggestions could, given adequate time and computer capability, be incorporated into the model for Texas and would provide improved predictive results:

1. Test effects of changes in data base by substituting actual data on the frequency distribution of injuries in Texas.

Module B of the Milliman and Robertson model creates a frequency table for injuries occurring within the state being considered. A table of 54 cells classified by vehicle type, severity of injury, occupant status, number of vehicles, and a fault status is created.

The basis for individualizing a distribution by state is the number of urban and rural deaths reported in the Federal Highway Administration's *Fatal and Injury Accident Rates on Federal and Other Highway Systems 1970* for the state under consideration. Injuries and deaths are distributed over 100,000 injuries by applying death ratios to allocate deaths categorically. These death ratios are developed mathematically using the number of urban and rural deaths reported for a particular state. For Texas those figures for 1970 were:

Urban Deaths - 1,332
Rural Deaths - 2,228

Milliman and Robertson justified using the split between urban and rural deaths as the basis for developing the frequency tables by stating that this is one accident statistic that is available for all states on a substantially unbiased basis. They stated also that rural versus urban seems to

explain the relative frequency of injuries better than any other available variable.

While actual death statistics were used by Milliman and Robertson, however, its calculated death ratio–i.e., fatalities as a percent of total injuries–was not the same as that indicated in actual data provided by the Department of Public Safety. A copy of the input for Model B, supplied by Milliman and Robertson, rather indicated that a significantly lower death ratio was used as model input. This discrepancy reduced our confidence in the results. We also developed the capability of producing a more reliable table by using data provided by the State Insurance Board of Texas and the Department of Public Safety. It was our intent to use Milliman and Robertson's Modules A, C, and D, and replace Module B with its own program.

2. Test effects of changes in Texas Law–the original Milliman and Robertson system was devised when Texas had a contributory negligence law and a strong guest statute. As the Milliman and Robertson system's results began to surface, Texas had gone to a comparative negligence law with a modified guest statute and PIP.
3. Test effects of different No-Fault Laws–S.354 was broad and set minimum requirements leaving much latitude in terms of what may ultimately result. Differing threshold limits and benefit packages could be tested. (It is within the capability of the model to test these.)
4. Test the sensitivity of selective input parameters used by Milliman and Robertson and ourselves–137 values are input into the model. We planned to selectively test several to determine if a percentage change in any one parameter would significantly change the results.

Module C accepts Modules A and B's output for calculation. Module C calculates the number of injuries generated in Module B for each frequency cell which will be compensated under each insurance system, tort and no-fault, and combines them with the appropriate costs as generated in Module A to determine the costs for each cell.

It was in Module C that the seminar planned to test the sensitivity of some of the most important input factors to the model, particularly those factors which further described the injury population, including insurance status (guest statute, insured ratios, etc.) and those which defined the extent of no-fault coverage (eligibility, subrogation, etc.). Unfortunately, despite extensive efforts and communications with the Department of Transportation and the Milliman and Robertson firm over a period of several months, time and resource limitations prevented access to the computer model for the performance of the tests.

TABLE V-2

S.354 COSTS UNDER BENEFIT AND THRESHOLD VARIATIONS*

CHANGE IN AVERAGE TOTAL AUTOMOBILE PREMIUM**

HT	HL	HN	LT	LL	LN
-5	-1	+4	-8	-4	0

* Variation codes are defined in Appendix V-1.

** Entries are estimates of percentage changes in the *average automobile insurance total premium* (personal injury plus automobile damage) payable per insured vehicle under the proposed no-fault system relative to the previous tort liability system. For Texas, the personal injury premium is approximately 35 percent of the total premium according to the Milliman and Robertson, Inc. study.

CHANGE IN AVERAGE PERSONAL INJURY PREMIUM***

HT	HL	HN	LT	LL	LN
-14	-3	+10	-23	-12	+1

CHANGE IN TOTAL PERSONAL INJURY PREMIUMS IN STATE****

HT	HL	HN	LT	LL	LN
+4	+17	+33	-7	+6	+22

*** Entries are estimates of percentage changes in the *average automobile insurance personal injury premium* payable per insured vehicle under the proposed no-fault system relative to the previous tort liability system. The personal injury premium includes bodily injury liability, medical payments, and uninsured motorist coverage.

**** Entries are estimates of percentage changes in *total automobile insurance personal injury premiums* payable in the state under the proposed no-fault system relative to the previous tort liability system.

Source: *Cost Estimate Study of No-Fault Automobile Insurance*, prepared for the U.S. Department of Transportation, Milliman and Robertson, Inc., Pasadena, California, November 7, 1973, pp. 9, 10, 11.

TABLE V-3

BILL PROVISIONS AND VARIATIONS

VARIATION PARAMETERS AND DEFINITIONS

BENEFIT LIMITATION	HIGH	LOW
Wage Loss Maximum Amount	$25,000 variable	$15,000 fixed
Services Maximum Period	3 years	1 year
Survivors Maximum Amount	$15,000	$5,000

THRESHOLD PROVISION	TIGHT	LOOSE
Disability Qualifying Period	6 months	2 months
General Damages Deductible	$2,500	none

CODE	VARIATION DEFINITION
HT	High benefit level, tight threshold provision
HL	High benefit level, loose threshold provision
HN	High benefit level, no threshold provision
LT	Low benefit level, tight threshold provision
LL	Low benefit level, loose threshold provision
LN	Low benefit level, no threshold provision

Source: *Cost Estimate Study of No-Fault Automobile Insurance*, Prepared for the U.S. Department of Transportation, Milliman and Robertson, Inc., Pasadena, California, November 7, 1973, p. 14.

APPENDIX V-1

MODEL INPUT ASSUMPTIONS

1) Rehabilitation provisions will add 7% to medical costs included in the data base. Sections 103(16) and 109(c).
2) Medical costs beyond $10,000 per claim will add 6% to medical costs limited to $10,000 per claim.
3) Wage loss costs beyond $10,000 per claim will add 6% to wage loss costs limited to $10,000 per claim, distributed as follows:
   a) $10,000 to $15,000 — 3%
   b) $15,000 to $20,000 — 1%
   c) $20,000 to $25,000 — 1%
   d) Over $25,000 — 1%
4) The income tax offset provision will reduce gross wage loss costs by 15%. Section 208(b).
5) Medical expense and wage loss costs will be reduced 5% each by the offset for workmen's compensation. Section 208(a).
6) Medical costs will be reduced 5% by social security and other federal government program offsets. Section 208(a).
7) Wage loss costs beyond five months of disability will be reduced 15% by the offset for social security. Section 208(a).
8) State temporary disability programs will reduce wage

loss costs for the first 26 weeks of disability as follows:

a)	California	50%
b)	Hawaii	50%
c)	New Jersey	40%
d)	New York	50%
e)	Rhode Island	40%

9) Replacement service benefits will be payable on a seven-day-week basis.
10) No-fault survivor benefits are based on population mortality, are discounted at 5% interest per annum, and continue if needed until the decedent would have reached age 65. Section 103(32).
11) Residual liability death claims will be equal in amount to tort system death claims when payable. Section 206(a)(5)(A).
12) Inflation has caused costs contained in the data base to increase by 25%. Section 201(b).
13) State financial responsibility laws will not be changed and the average liability insurance limits actually purchased will relate to the minimum limits as follows:
    a) $ 5,000 minimum - $10,000 average
    b) 10,000 minimum - 20,000 average
    c) 15,000 minimum - 25,000 average
    d) 20,000 minimum - 28,000 average
    e) 25,000 minimum - 30,000 average
14) Persons with nonserious injuries yet eligible to take tort action will do so 75% of the time with no threshold, 85% with a loose threshold, and 95% with a tight threshold. Section 206(a).
15) Persons with nonserious injuries and technically ineligible to take tort action will qualify subjectively to do so 5% of the time with a tight threshold and 10% with a loose threshold. Section 206(a).
16) A six-month disability threshold is equivalent to an average $2,000 medical cost threshold, and a two-month to an average $600 medical cost threshold, in each case varying by medical cost levels in the state. Section 206(a)(5)(B).
17) The $2,500 general damages deductible will be 50% effective and will operate as a $1,250 deductible per claim. Section 206(a)(5).
18) A tort propensity will cause not-at-fault bodily injury claims to be increased beyond data base indications as follows:

a)	Connecticut	15%
b)	Illinois	10%
c)	Massachusetts	25%
d)	New Jersey	10%
e)	New York	15%

19) Mild guest statutes will permit tort action by a passenger 30% of the time, and strong ones 7½% of the time.
20) Out-of-state accidents and accidents involving out-of-state cars will occur with frequencies shown in Exhibit E-7.
21) Motorcyles will be included among compulsory coverage vehicles under the law. Section 103(17).
22) The compulsory nature of the law will cause owners of half of the currently uninsured vehicles to purchase insurance, except in states where tort liability coverage is already compulsory. Section 104(d).
23) Loss adjustment expenses will change from 19% under the current system to 25% for general damage claims, 10% for death claims, and amounts varying by threshold provision as follows for no-fault and excess liability claims:

a)	Tight	11%
b)	Loose	13%
c)	None	15%

24) Administrative and marketing expenses will remain constant as a proportion of total premiums.
25) Bill provisions tending to increase insurance company operating expenses or claim payments will not be administered so liberally as to cause appreciable premium increases.

APPENDIX V-2

CAVEATS PERTAINING TO NUMERICAL RESULTS
(Milliman and Robertson Cost-Estimate Study)

Although the conclusions presented in this report are probably the best estimates available, it should nonetheless be recognized that they are subject to a high degree of uncertainty as well as being very susceptible to misinterpretation. It thus becomes essential to specify that those conclusions neither be used nor released except in conjunction with a thorough understanding of the following caveats:

(1) Average premium change indications will not apply uniformly, but rather will vary considerably by type of vehicle insured. Inclusion of motorcyclists under the no-fault law, for example, may be expected to increase premiums greatly for this group of motorists.
(2) The study did not deal with changes in rating classification and territorial relativities, which may be substantial. Generally speaking, urban areas of a state may be expected to experience results that are more favorable than shown, and rural areas results that are less favorable.
(3) The cost implications of the input assumptions and supporting data base to the model should not be overlooked nor underestimated. This is particularly true where there is a combination of uncertainty and cost impact, such as of psychological factors affecting tort action rates and of large first-party loss projections based on sparse data of limited applicability to no-fault auto insurance.
(4) The study deals exclusively with the relativity between the proposed system and the tort liability system currently or most recently effective in the given state with costs for both systems projected to 1974 levels. No attention has been given to possible inadequacy or redundancy of existing premium rate levels.
(5) The study addresses the automobile insurance system only, and not the effects of changes in that system on other lines of insurance or public institutions or personal risk assumption.
(6) The findings presented in this report reflect no more than an attempt to predict the relative cost implications of passage of a particular bill, and not the effects of various other influences on automobile insurance premiums. Such influences are many, and include changes in automobile safety features, enforcement of driver standards, marketing and administrative practices, public attitudes toward seat belts and drunk drivers, and general economic conditions, among others.

Source: *Cost Estimate Study of No-Fault Automobile Insurance*, prepared for the U.S. Department of Transportation, Milliman and Robertson, Inc., Pasadena, California, November 7, 1973, pp. 12 and 13.

FOOTNOTES

[1]U.S. Department of Transportation, *Automobile Personal Injury Claims,* volume 1, July, 1970, pp. 78, 123.

[2]*Ibid.*

[3]In every state 8.5 percent of automobile bodily injury losses incurred was deducted as an estimate of medical payments benefits. In fact, in 1968, medical payments claims paid were 41 percent of total automobile bodily injury losses incurred (partially explaining why medical payments insurance is more expensive for Texans than for citizens of most other states). When this factor is accounted for in the DOT formula, then Texas attorneys collected 28.6 percent–higher than the U.S. average–of gross payments to bodily injury claimants, rather than 18.2 percent as indicated in the DOT study.

[4]"Survey of District Courts", Texas Civil Judicial Council, Press Release, March 16, 1973.

[5]See, for example, U.S. Department of Transportation, *Public Attitudes Toward Auto Insurance* and *Public Attitudes Supplement,* 1970, and Thomas C. Morrill, Vice President, State Farm Mutual Automobile Insurance Company, Presentation Before the Senate Antitrust and Monopoly Subcommittee, December 9, 1969.

[6]*The Sentry Insurance National Opinion Survey: A Survey of Consumer Attitudes in the U.S. Towards Auto and Homeowners Insurance,* conducted by Louis Harris and Associates, Inc., and The Department of Insurance, The Wharton School, University of Pennsylvania, January, 1974.

[7]*Ibid.*, p. 67.

[8]*Ibid.*, p. 66.

[9]*Vernon's Annotated Revised Civil Statutes of the State of Texas,* art. 2212a, secs. 1,2; VACS, art. 6701b, sec. 1; VACS, Insurance Code, art. 5.06-3.

[10]VACS, art. 2212a, sec. 1.

[11]VACS, art. 6701b, sec. 1(a).

[12]Cornelius J. Peck, "Comparative Negligence and Automobile Liability Insurance," *Michigan Law Review* (Volume 58: 1959-1960), pp. 90-129.

[13]*Ibid.*, p. 110.

[14]*Ibid.*, pp. 123, 129.

[15]Jerry D. Todd, "The Prospect for Automobile Insurance Rate Changes Under Comparative Negligence." *Texas Bar Journal,* December, 1973, p. 1154.

[16]Rule 277, Texas Rules of Civil Procedure.

[17]U.S. Department of Transportation, *Automobile Personal Injury Claims,* volume 1, 1970, p. 30.

[18]*Final Report Concerning the Cost Estimating System for No-Fault Automobile Insurance,* developed for the National Association of Insurance Commissioners, by Milliman and Robertson, Inc., Consulting Actuaries. August, 1973, p. 7.

[19]*Ibid.*

[20]Effects of the new Comparative Negligence and Guest Statute Modification Law, and of the Personal Injury Protection Law which became effective for Texas residents in August, 1973, are not reflected in study results.

[21]Bernard L. Webb, "Cost Considerations Under the National No-Fault Motor Vehicle Insurance Act (S. 354)." Statement before the Committee on the Judiciary of the U.S. Senate. January 30, 1974.

[22]Webb, pp. 4-6.

[23]Calvin H. Brainard, "Statement of Calvin H. Brainard, Professor of Finance and Insurance, The University of Rhode Island in Opposition to Senate Bill 354, The Federal No-Fault Automobile Insurance Act" before the Committee on Judiciary of the U.S. Senate. February 5, 1974.

[24]Inter-Association Actuarial Group (IAAG), "A Review of the Milliman and Robertson, Inc., Cost Estimating System for No-Fault Automobile Insurance." November 28, 1973.

[25]Milliman and Robertson, Inc., *The Final Report Concerning the Cost Estimating System for No-Fault Automobile Insurance,* presented to the N.A.I.C. Executive Committee, August 31, 1973, p. 12.

[26]IAAG, pp. 3-5.

[27]IAAG, pp. 3-5.

[28]Webb, p. 8.

[29]Webb, p. 9.

[30]Brainard, p. 4.

[31]Brainard, p. 4.

[32]Frederick W. Kilbourne, Letter to the Editor of the *Washington Star News,* August 1, 1973.

[33]State Bar of Texas, "The State Bar of Texas lays it on the line about federal no-fault," advertisement, February, 1974, *Texas Monthly,* p. 69.

[34]Milliman and Robertson, Inc. *A Cost Estimate Study of No-Fault Insurance,* prepared for the U.S. DOT, November 7, 1973. p. 12.

[35]IAAG, p. 6.

[36]Webb, pp. 13-15.

[37]Brainard, pp. 7-8.

[38]Brainard, p. 8.

[39]IAAG, p. 10.

[40]Inter-Association Actuarial Group, "A Review of the Milliman and Robertson, Inc., Cost Estimating System for No-Fault Automobile Insurance," a report prepared for the American Insurance Association, National Association of Independent Insurers and the American Mutual Insurance Alliance, November, 28, 1973.

[41]Calvin Brainard, "A Statement of Calvin H. Brainard, Professor of Finance and Insurance, The University of Rhode Island, In Opposition to Senate Bill 354, The Federal No-Fault Insurance Act," before the Committee of the Judiciary of the United States Senate (Washington, D.C., February 4, 1974).

[42]Bernard Webb, "Cost Considerations Under the National No-Fault Motor Vehicle Insurance Act (S. 354)," a statement before the Committee on the Judiciary of the United States Senate (Washington, D.C., January 30, 1974).

CHAPTER VI

ALTERNATIVES AND CONCLUSIONS

This study of the feasibility of a no-fault automobile insurance system in Texas, had two primary objectives:

- to determine what effect the implementation of a no-fault system would have on premiums paid by Texas drivers;
- to investigate what benefits would be gained or lost under a no-fault system.

The first problem encountered was that of defining the term no-fault. There is no single system of no-fault insurance; rather there is a wide variety of existing and proposed no-fault plans. In order to accomplish the study's objectives, it was therefore necessary to consider these various plans both as they operate elsewhere and as they might potentially operate in Texas.

The second problem encountered was a lack of reliable data upon which to base solid, unquestionable conclusions. The relative newness of the no-fault plans currently operating in other states, the demographic differences between those states and Texas, and most frustratingly, the manipulation of statistics by both opponents and proponents of no-fault, all combined to make much of the available data either non-transferable or meaningless. Extreme caution, therefore, was exercised in the use of data throughout the report, and every effort has been made to warn the reader of the inherent weakness of our statistical analyses.

Since cost is a major concern of those legislating no-fault plans, much time and effort went into the gathering of appropriate data for cost estimations. It should be realized from the start, however, that even should the enactment of a no-fault law produce significant cost savings, they would apply only to one segment of the total automobile insurance premium. Typically, that part of the total premium paid for property damage coverages (i.e., property damage liability, collision, and comprehensive) remains unaffected by no-fault laws. These coverages typically account for about two-thirds of the total premium. Consequently, "bottom line" premium reductions for individuals would depend on the percentage of their total premiums attributable to bodily injury liability and first-party coverages such as medical payments, personal injury protection, and uninsured motorists.

In order to make cost estimates for no-fault insurance in Texas, the project relied on the Milliman and Robertson Cost Estimating Model for S.354, the proposed National No-Fault Automobile Insurance Act. In our opinion, this is the best model currently available for testing the potential costs of no-fault automobile insurance. Its reliability, however, is limited not only by the caveats that Milliman and Robertson cite but, further, by the vast array of actuarial judgments and data assumptions that are included in the model. For example, Milliman and Robertson data estimated the fatality ratio (the ratio of deaths per 100 injuries) in Texas for all drivers to be 2.1 percent. Department of Public Safety data, however, showed the actual 1971 fatality ratio to be approximatley 3 percent while that for 1970 was even higher. The difference in these two ratios alone, when included in the model, would significantly increase the personal injury permium projection over that produced by the Milliman and Robertson calculations. Many other estimates and assumptions affect Milliman and Robertson's cost estimations significantly. For these reasons, we conclude that we cannot justify recommending a switch to no-fault on the basis of premium reduction alone.

The more important question, then, becomes that of benefits gained or lost as a result of a no-fault plan. In Chapter I the desirable characteristics of a good automobile insurance system are listed. They include: (1) It should compensate a maximum number of injury victims; (2) it should provide adequate and just compensation; (3) it should pay benefits promptly; (4) it should be economically efficient–i.e., return a high percentage of total premiums to victims; (5) it should provide for correlation with other insurance; (6) it should guarantee availability of reliable coverage; (7) it should encourage prevention and rehabilitation; and (8) it should be easily understood by insurance consumers and providers alike. The benefits lost and gained under reform proposals will be discussed in terms of these characteristics and how these characteristics are or are not a part of the current tort liability system.

Following much study and discussion, we have limited our reform alternatives to two plans; one, a modified no-fault system, and the other a modified tort liability

system. The features of the two plans are:

PROPOSED MODIFIED NO-FAULT PLAN

1. Compulsory first-party no-fault (PIP) with $2,500 economic loss protection minimum.
2. Compulsory liability coverage for bodily injury (10/20,000) enforceable by fines.
3. Automobile insurance primary.
4. First-party no-fault benefits are to be mandatory and are to be the initial source of loss recovery.
5. Subrogation of first-party benefits is to be allowed.
6. Lawsuits are permitted for economic loss recovery over $2,500.
7. General damage lawsuits are permitted for loss exceeding medical cost threshold, or cases of dismemberment, permanent disfiguration, or death.
8. Duplicate payments from within the automobile insurance system are not allowed.
9. A penalty for delinquent payment of first-party benefits assessed against the insurer (1.5 percent per month after 30 days).

PROPOSED MODIFIED TORT LIABILITY PLAN

1. Compulsory PIP with $2,500 minimum.
2. Compulsory liability coverage for bodily injury (10/20) enforceable by fines.
3. Automobile insurance primary.
4. First-party (PIP) benefits are to be compulsory and are to be the initial source of loss recovery.
5. Subrogation of first-party benefits is to be allowed.
6. Lawsuits for economic losses are permitted only for amounts in excess of $2,500.
7. Lawsuits for general damages are unrestricted. However, in such suits the "Delaware evidentiary rule" will apply. Under this rule damages for which compensation is available under required first party coverages is inadmissible evidence.
8. Duplicate payments from within the automobile insurance system are not allowed.
9. A penalty for delinquent payment of first-party benefits assessed against the insurer (1.5 percent per month after 30 days).

Compensation to Victims

Weaknesses in present financial responsibility laws in many cases allow innocent victims in automobile accidents to go totally without compensation for their losses. Furthermore, unless the at-fault drivers have purchased first-party automobile coverage, they receive no compensation for their losses. If they have not purchased such first-party automobile coverage, they must rely on other forms of insurance or personal resources to cover their losses. Ultimately, we believe that a good automobile insurance system should seek to assure that all automobile accident victims receive compensation for their losses. For this reason, first-party coverage should be made compulsory regardless of whether the reform plan chosen is an improvement of the tort liability system or a modified no-fault plan.

Under the proposed modified no-fault plan described here, beyond compulsory first-party coverage of $2,500, residual liability coverage should be required up to at least the present 10/20 bodily injury limits. Serious considerations should be given to raising these limits to bring them more in line with current costs and inflationary trends.

The improved tort liability system would also feature both compulsory first-party (PIP) and tort liability coverage. The requirement that PIP be the initial source of recovery for economic losses under PIP limits would, in many cases, make tort liability coverage residual (i.e., applicable only when losses are above $2,500) as in the case of modified no-fault. The difference between this system and the modified no-fault plan is that in those instances where suits are filed for pain and suffering, tort liability coverage becomes the primary provider of benefits.

In summary, our belief that an insurance system should ideally seek to compensate as many accident victims as possible prompts the conclusion that both first-party and residual tort liability benefits should be made compulsory. Such a requirement should provide adequate coverage in most automobile injury cases. Since a compulsory insurance requirement will not likely result in 100 percent of Texas' drivers purchasing (PIP) and liability coverage, however, there will still be some innocent victims of uninsured motorists who will go uncompensated for their losses. However, uninsured motorist coverage is available for such cases. To the extent that compulsory liability is successful in increasing the percentage of insured motorists, the already minimal uninsured motorist premium should decrease even further.

Adequate and Just Compensation

In Chapter I it was stated that an insurance system should seek not only to compensate as many victims as possible, but also to compensate them adequately and justly. The U.S. Department of Transportation closed claims study as well as our own survey showed that small losses are often overcompensated. Both the modified no-fault and the modified tort plans would provide more adequate and just compensation.

Overcompensation of accident victims is said to be caused by the threat of suit for pain and suffering. A modified no-fault plan would not allow a victim to sue for pain and suffering unless he first incurs a certain amount of medical expenses. Consequently, in those cases where the victim does not exceed the medical expense threshold, the

threat is removed. For such a plan to be effective, this threshold must not be too low, however, for in that case there is an incentive for claimants to overutilize or even fake medical services to get above the threshold. The same circumstances would surround a claim filed for PIP benefits under the modified tort system. However, under that system the victim can still seek tort remedy for general damages.

As far as undercompensation of large losses is concerned, neither modified no-fault nor modified tort liability could drastically change the present trend. Difficulties in measuring large on-going losses, reluctance of juries to make adequate settlement, contingency fee arrangements and inadequate insurance limits will continue to cause undercompensation.

Quick Delivery of Benefits

Another area in which the tort system falls short of the desirable characteristics of an automobile insurance reparations system is the delay in the delivery of benefits to accident victims. Both the modified no-fault plan and the modified tort liability plan would provide speedier delivery of benefits for out-of-pocket economic losses through first-party payments, penalties for delinquency in payment, and expected reduction in time-consuming tort actions. The higher the threshold, the lesser the number of tort actions allowed in the system, and, therefore, the greater the number of claims settled quickly. This does not, however, speak to the adequacy and fairness of those benefits.

Economic Efficiency–
Return on Premium Dollar

One of the major criticisms of the current automobile insurance system is the apparent waste involved in the delivery of benefits to injury victims. Nationwide, only 42 cents out of each bodily injury premium dollar finds its way back into the hands of claimants and only 14 cents of this is for non-duplicated out-of-pocket costs, according to estimates made by the U.S. Senate Antitrust and Monopoly Committee. While data specifically for Texas was unavailable, the total nationwide bodily injury premiums dollar breakdown is:[1]

Return to claimants		.42
Pain and Suffering	.21	
Duplicative Coverage	.07	
Economic Benefits	.14	
Legal Costs		.18
Plaintiff Lawyers	.16	
Court Costs	.02	
Adjustment Costs		.14
Company Expenses (Sales, Overhead, Taxes)		.26
TOTAL		$1.00

Return on premium dollars for health insurance and particularly group insurance and social security are considerably higher. So, when defining economic efficiency strictly from the standpoint of percentage return to victims per premium dollar paid into the system, automobile bodily injury liability insurance is not as efficient as the above forms of first-party insurance.

No-fault proponents argue that their system of first-party payments could more closely approach the efficiency levels of other first-party coverages. Assume, for instance, that the modified no-fault plan described earlier had a threshold which would eliminate one-half the dollars presently going to legal expenses. The exact dollar amount of this threshold is not important provided it would eliminate one-half the legal expenses of the current system. The bodily injury breakdown stated above might be revised to show only 9 cents going to legal expenses while benefits returned might be expected to increase to 51 cents. Adjustment costs might also be expected to decrease somewhat with first-party settlements but such a decrease might be offset to a degree by allowance for subrogation.

The modified tort-liability system would have somewhat similar results. The requirement that PIP be the initial source of recovery for economic losses below $2,500 would remove those claims for the tort system, thereby reducing somewhat the legal costs of the system. It would not, however, reduce the costs as much as the proposed modified no-fault plan because of the absence of any limitation on the right to sue for general damages.

Correlation with Other Forms of Insurance

Under the existing Texas PIP law, an injury victim can recover his own PIP benefits, and then recover tort benefits for the same injury claim from the wrongdoer. Such double payment is both inequitable and costly. Both proposed systems would alleviate this problem with their allowance for subrogation by the insurance companies of not-at-fault drivers for first-party benefits paid to their insureds. Tort recovery by the injury victim for economic losses would be limited to those cases where losses exceed first-party coverage.

There is also duplication of coverage between automobile insurance and other forms of insurance. Such duplication works to increase the costs of both coverages and should be reduced or eliminated where possible. It is our conclusion that:

- the advantages of the current automobile insurance rating system should be preserved;
- that insurance which individuals are forced to buy should be the one which must pay benefits.

Therefore, it is recommended that, under a system of compulsory automobile insurance, the automobile insurance benefits should be primary over other forms of

insurance, with limited exceptions, such as workmen's compensation and government-provided military benefits. If these existing governmental programs, which are currently primary coverages, were made excess coverages, the cost of automobile insurance would rise considerably while employers' and the federal government's cost would be reduced.

Availability of Reliable Coverage

The ready availability of automobile insurance to all who need it has been a problem since the institution of financial responsibility laws, if not before. The problem is compounded whenever insurance is made compulsory, however,

According to studies conducted for the U.S. Department of Transportation by one of the authors of this study, Jerry D. Todd, under the current system in Texas coverage is generally available even for the very high-risk driver. The Texas Automobile Insurance Plan and several county mutuals operating essentially outside the state's rate regulatory system for automobile insurers assure accessibility to insurance markets for practically anyone seeking automobile insurance. The costs, however, are extremely high and tend to make such coverage unaffordable to many drivers.

Only a very small percentage of the state's drivers are insured in either of these ways. A shift to compulsory insurance will likely bring a significant increase in numbers into the "high risk" market. Even the county mutuals are selective, and the assigned risk pool guarantees only liability insurance, not other coverages needed by motorists. Consequently, it is our conclusion that, at the minimum, the current assigned-risk plan should guarantee availability of liability insurance and PIP coverage to all motorists who cannot otherwise obtain necessary coverage from the voluntary market. Further study is needed in this area to determine the best means of coping with the high-risk driver.

Emphasis on Rehabilitation and Prevention

Proponents of the tort system often claim that liability based on negligence is a deterrent to careless driving. It is argued that drivers will be more careless if they are not responsible for their actions. Furthermore, rating under a no-fault system, it is said, would penalize careful low-risk drivers while in effect rewarding the causers of accidents.

Under either alternative proposed here–modified no-fault or modified tort–the rating structure or classification system would remain essentially the same as it is now, based partially on driving records. Thus, those drivers who receive traffic citations and convictions will pay higher rates than those free of such violations. This solution is more equitable than the alternatives, and if such incentives are present in the driving situation, they will encourage safer driving habits. Adjustments are needed, however, because under this system, insureds paying the highest rates may not be the same as those receiving the most benefits. Likewise, insurers receiving low rates from a group of insureds may be forced to pay high benefits to them even though they are not at-fault drivers. The subrogation process permits such adjustment between insurers.

While there has been no real evidence to show causality between the exposure to liability suit and driving behavior, if such a relationship exists the modified tort liability system would preserve it. The individual driver, in that case, is still fully liable for general damages.

The existence of compulsory first-party benefits should increase rehabilitation efforts for two reasons. First, for both alternatives the incentive to prolong recovery is reduced. The insurer is in fact penalized if it delays payment. The insured is able to recover simply and directly the full amount of his economic losses. The need to negotiate a settlement based on probabilities of fault are reduced to those cases involving large sums. Second, by quickly disbursing funds to the insured and encouraging him to seek rehabilitation, the insurer is better able to reduce long-run payments and settlements. In some cases at present, immediate rehabilitation may actually be discouraged by the plaintiff's attorney on the grounds that it would reduce the amount of settlement.

Public Understanding

Either system, modified tort liability or modified no-fault, should prove easier to understand for the insured and provider than the present system, because of the stress of first-party coverage. When an insured is involved in an accident, the general tendency is to first contact his own insurer, which in fact, he is required to do in most cases under the conditions of his contract. In most cases, it should prove far simpler and more understandable for a policyholder to have his own insurer make restitution for his economic loss rather than track down the other party (which may be difficult itself in this day of widespread interstate travel), negotiate with his insurance company, wonder whether any settlement offer received from such insurer is a fair one, and whether to hire an attorney. Of course, in all cases involving serious injury, the insured will need to pursue these avenues for adequate indemnification. There may continue to be misunderstandings about what and how much is covered, in some cases determinable only by legal action against one's own insurer, but such cases are present in the current system and are likely to be present under any new plan.

Along with public understanding, public acceptance is very important. If the amount of coverage required by law, for example, is inadequate or inequitable, increasing frustration and eventual lawsuits will result, making the system

less effective. For this reason, it is proposed that the required $2,500 PIP limits or whatever other limits are adopted be adjusted upward on an automatic basis as the cost of living increases. It is also suggested that the maximum wage remuneration be sufficiently high to allow at least two-thirds of the working population to recover at least two-thirds of their wages. Again this maximum figure should be subject to automatic adjustment upward to overcome the problems that have plagued workmen's compensation claimants over the past decades. Optional coverages should make available increased limits.

General Conclusions

Having discussed all the characteristics of a desirable reparation system separately, it is now necessary to discuss them collectively by what we consider the most important overall standard of excellence—a high benefits/cost ratio. Other things equal, that system is best which produces the highest level of benefits in relation to its costs.

Mention has already been made of the fact that no-fault automobile insurance cannot be justified on the basis of premiums reduction alone. But premiums and cost are not synonomous terms. If two individuals pay the same premium for different coverages, their costs are not the same. In fact, one individual could pay a higher premium than the other and actually have a lower cost, if his coverage were greater than the differential in premium. The concept of relative cost, then, is measured only in relation to benefits. If one dollar buys two units of some good or service while two dollars buys five units, the second alternative is the more costly one in terms of absolute dollar outlay but is cheaper in terms of cost per unit. In fact, of course, both measurements are relevant to our analysis. However, to say that a proposed reparations system does not produce a premium reduction (often wrongly referred to as a "cost saving") is not to condemn it, especially where the benefits are increased while the premium remains fixed or where the benefits are increased by a greater amount than the increase in premiums.

First-Party Payments. The principle of first-party payment of benefits has been emphasized and has many advantages. First-party payments provide compensation to more victims, delivers those benefits more promptly, and allows more efficiency in delivery of those benefits than does the present system. For these reasons, first-party coverage was made compulsory in both of the alternatives presented here. The $2,500 level of first-party coverage was chosen because currently the bulk of claims in Texas are for less than this amount and this would be paid under a prompt and efficient first-party system. Department of Public Safety data show that in 1973, 90 percent of all automobile injury claims were for less than the $2,500. As noted earlier, this figure should be adjusted upward over time to reflect changes in medical care costs and average wages.

Compulsory Liability at 10/20 Level. While embodying the first-party principle fully, it is also felt that people should be responsible for their actions. Therefore, an attempt has been made to strengthen the concept of financial responsibility by including, under both alternatives, compulsory 10/20,000 bodily injury liability insurance, enforceable by spot-check fines greater than the cost of annual compulsory insurance premiums. Such a measure should cause only small administrative difficulties and would provide a strong incentive to obtain the minimum compulsory coverage. The required coverage, though adding some administrative worries, would strengthen financial responsibility, by reducing the likelihood of occurrence of an injury for which there exists no means of compensation, and would provide more adequate compensation of large losses.

It has been argued that compulsory liability coverage would cause insurance premiums to increase because (a) more accidents would be insured and (b) accident victims, knowing that most drivers have liability insurance, would have greater tendencies to file suits. The requirement that economic losses under $2,500 be collected from first-party coverage should greatly curb any such increase in the propensity to sue for economic loss. As for general damages, the modified no-fault plan would eliminate general damage suits except in cases where medical losses exceed a designated threshold, dismemberment, permanent disfigurement, or death. The modified tort liability plan, while not restricting the right to sue for general damages does severely limit the ability to prove general damage losses. The evidentiary rule requirement, as practiced in Delaware, would disallow the introduction of evidence showing economic losses into a general damage proceeding unless such economic losses exceeded the specified threshold. Thus, the general damage plaintiff would be forced to document his pain and suffering in ways other than through evidence regarding extravagant economic losses. For these reasons, it is concluded that compulsion as recommended in both plans will *not* cause a great increase in the number of tort actions or a resulting increase in rates.

It is fully realized that a compulsory insurance law will not bring about 100 percent compliance. In fact, according to New York's experiences, increases in costs and administrative efforts to enforce compliance are not rewarded by proportionate increases in insured motorists, and even then 100 percent will not be reached. Consequently, there is still need for uninsured motorist coverage or optional higher-than-required PIP limits.

At the same time, there are those who will be unable to afford the high cost of insurance. It was not considered a part of this study, however, to determine the solution to the age-old problem of what to do about those drivers of

limited means who would face considerable hardship in meeting their legal financial responsibility.

Primacy. As stated earlier in this chapter, the insurance which people are forced to buy should be the insurance that is forced to pay benefits. In both alternative plans, it is recommended that automobile insurance be the primary source of recovery for automobile-related injury losses. In so doing, provision has been made for the elimination of duplicative benefits from different forms of insurance and allowance made for the internalization of automobile insurance industry costs.

Mandatory Recovery. Provision is made for first-party benefits under both alternatives, and it is also mandated that those benefits be the initial source of loss recovery. The first-party system of payment cannot function at maximum effectiveness without this requirement.

Subrogation. The purpose of providing for subrogation in both plans is to derive two important benefits. First, subrogation of first-party payments would eliminate the double payment of benefits from both first-party and liability coverages which presently takes place under the Texas PIP law. Secondly, it will allow the present rating structure to remain relatively unchanged. Individual rates would continue to be based on the risk posed to the insurance company by the individual driver in terms of his tendencies to cause accidents.

Restriction of Lawsuits. Both of the plans under consideration would limit the number of tort actions. The difference, of course, is in their allowance for pain-and-suffering suits. The modified no-fault plan severely limits the right to general damage action. The modified tort liability, however, does not limit this right, and under it injury victims may file suits for pain and suffering regardless of the circumstances of their losses, but their court cases are restricted by the Delaware evidentiary rule.

Penalty for Delayed Payment. No-fault opponents argue that in the absence of the threat of suits for pain and suffering, insurance companies will not deal swiftly with their insureds. The provision for a 1.5 percent monthly penalty to be charged against the insurance company after 30 days should provide the incentive needed to offset the loss of the general damage threat.

Other Issues. In investigating the broader and more fundamental issues regarding no-fault insurance, some lesser issues have been left to other researchers. They are mentioned here so that future policymakers will give them adequate consideration in structuring any proposed no-fault legislation or related bills.

First, it has been claimed that the inclusion of commercial vehicles under a no-fault law would result in higher costs for private passengers and lower costs for commercial vehicles. At least one study has recommended that commercial vehicle owners foot the whole bill in accidents involving their vehicles to eliminate this problem.[2]

Drunken drivers, those in the act of committing felonies, and those intentionally causing accidents have not been given the same protection against liability suit that others have under some no-fault plans. It is argued that to expose them to full liability will discourage such actions. Under both of our proposals, no recommendations are made for this special class of drivers.

Without a federal law, each out-of-state driver will likely have insurance which does not conform to the state law. This problem was not specifically addressed in the study, but is handled in other states typically by an endorsement which makes the policy conform to each state's laws when the driver is in that state.

Summary and Recommendation. As we have discussed the features and respective benefits and costs of each of the two proposed plans, it is clear that in most cases the benefits and costs of the two systems are very similar. There is, however, one basic difference in their treatment of general damage suits. This study recognizes that real pain and suffering do exist and that recovery for such pain and suffering should be permitted. At the same time, the abusive overuse of this right should be discouraged. It is probably true that severe restriction on the right to recovery for pain and suffering, as provided for in the modified no-fault plan, would result in some cost savings, but it is doubtful that these modest savings justify surrendering the right to sue for pain and suffering where they legitimately exist. It is, therefore, the recommendation of this study that the modified tort liability plan be adopted for implementation in Texas.

FOOTNOTES

[1] *U.S. Congressional Record*, 92nd Congress, 1st Sess., 1971, vol. 117, no. 22.

[2] *Automobile Insurance. . .For Whose Benefit?*, State of New York Insurance Department, February 12, 1970, p. 91.

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APPENDIX A

COMPULSION/COMPLIANCE IN AUTOMOBILE INSURANCE:

Survey Questionnaire

Lyndon B. Johnson School of Public Affairs
The University of Texas at Austin
Austin, Texas 78712

STATE:

1. Type of program.

   Indicate in the spaces provided the type of compulsory automobile insurance program you have (i.e., Bodily Injury Liability, Personal Injury Protection, etc.), the date that program was instituted, and the minimum amount of coverage required.

Type of Program	Date Instituted	Minimum Coverage Required

2. Enforcement and Administration.

   a) Does the insurance department administer your compulsory program? Yes____ No ____. If not, who does?

   b) Indicate below what change, if any, occurred in the number of personnel and in administrative costs as a result of the program.

Type of Program	Administrative Costs the Year Before	Administrative Costs the Year After	Number of Personnel Year Before	Number of Personnel Year After

   c) What methods are used for discovery of noncompliance?

   d) Are penalties imposed for noncompliance? Yes____ No____. If yes, please list the penalties.

3. Indicate the total number of cars and drivers in your state each of the five years before the program and each of the five years (if applicable) after the program.

Year	Cars	Drivers	Cars Insured	Drivers Insured

4. Uninsured motorists.

   a) In your opinion, why do some drivers remain without coverage?

   b) Do you expect about the same number of uninsured motorists next year? Yes_____ No_____. Why?

   c) What programs do you have to cover uninsured motorists?

5. Describe briefly your program for guaranteeing the availability of insurance to high risk motorists.

6. Out-of-state motorists.

   a) Describe briefly your law with respect to out-of-state motorists.

   b) Describe briefly how residents are protected from uninsured out-of-state motorists, if not covered in a previous answer.

7. Indicate any other problems which you have encountered in attempting to administer your compulsory insurance law.

   a) Why, in your opinion, do these problems exist?

   b) What possible solutions to these problems have you undertaken or would you suggest?

8. Other comments or suggestions.

9. Your Name_____

Title_____

Department_____

Address_____

Please mail the complete questionnaire to:

Ms. Mary Lu Barras
Automobile Insurance Seminar
Lyndon B. Johnson School of Public Affairs,
The University of Texas at Austin
Drawer Y, University Station
Austin, Texas 78712

APPENDIX B

ACCIDENT QUESTIONNAIRE

Lyndon B. Johnson School of Public Affairs
The University of Texas at Austin
Drawer Y, University Station
Austin, Texas 78712

A. DETAILS OF THE ACCIDENT	Yes	No
1. Were you:		
a. riding in a privately owned automobile?	____	____
b. riding in a commercial vehicle (taxi, etc.)	____	____
c. riding on a motorcycle	____	____
d. riding in a publicly owned vehicle (bus, etc.)	____	____
e. a non-occupant (pedestrian or bicycle rider)	____	____
2. At the time of the accident, were you:		
a. the driver	____	____
b. a passenger	____	____
3. How many cars were involved in the accident?		
a. 1 car	____	____
b. More than one	____	____
4. Who was determined to be at fault in the accident?		
a. you	____	____
b. another party	____	____
c. fault unclear	____	____

B. MEDICAL COSTS	Yes	No
5. As a result of this accident, did you receive treatment by a doctor?	____	____

6. How much were your hospital costs?

$0-$100___, $101-$500___, $501-$1000___,

over $1000___.

7. Other than any hospital bill, how much were the total medical costs for your care, including any amount paid by insurance (include cost of doctors, surgeon, dentists, private nurse, ambulance, medicine, special equipment such as wheel chairs, etc.)? (Check one)

   $0-$100___, $101-$500___, $501-$1000___,

   over $1000___.

8. If you were employed at the time of the accident, how long were you kept from work as a result of the accident?

   0 days___, 1 day-7days___, 8-14 days___,

   15-30 days___, over 30 days___.

9. How much money in wages did you lose as a result of the accident?

   $0-$100___, $101-$500___, $501-$1000___,

   over $1000___.

10. If you were not employed at the time of the accident, how long were you kept from your usual activities because of the accident?

    0 days___, 1 day-7days___, 8-14 days___,

    15-30 days___, over 30 days___.

11. Did the accident leave you with any permanent impairment which affects your ability to work or carry on other activities, such as school, housework or the like?____Yes ____No.

12. Did the accident leave you with any permanent serious disfigurement? Yes____No____.

13. What amount (in dollars) of your hospital and medical bills was paid by:

    a. Health insurance, including Medicare _____
    b. Workmen's compensation _____
    c. Contributions and charity_____
    d. Automobile insurance_____
    e. Free medical expenses (military, etc.)_____
    f. Your own pocket (do not include anything for which you were reimbursed)_____
    g. Other (please specify)_____

14. What is the total amount of medical bills still unpaid?

    _____

15. What sources did you use to meet your expenses, other than money from your own pocket?

    a. Savings _____
    b. Loan_____
    c. From sale of personal merchandise or property_____
    d. Other (please specify)_____

16. Did you file a claim against someone or their insurance company for medical expenses or loss of income (not including car damage)?_____

17. What was the amount of the claim? $_____

18. How much money did you receive (before deducting lawyer and other legal fees)? $_____

19. How soon after the accident was the first offer made to you to settle the claim?

    less than 10 days___, 11-30 days ___, over 30 days___

20. Did the insurance company make any advance payments or pay any of the bills resulting from your injury before final settlement?
    Yes____No____. If yes, how much? $_____

D. LAWSUITS

21. Was a lawsuit for damages ever filed on your behalf as a result of an injury you received in this accident?
    ____Yes____No

22. Did you hire a lawyer?____Yes____No

23. What agreement have you made with your lawyer regarding his fee:

    a. Percentage of the settlement _____
    b. Retainer or salary _____
    c. Other (Specify) _____

24. a. Was the case settled before the trial started? Yes ___ No ___
    b. Was the case settled before the trial was completed? Yes ___ No ___
    c. Was the case settled by the trial verdict? Yes ___ No ___

25. What were your total legal expenses? $_____

26. At the time of the accident, did you have liability insurance, that is, insurance that will pay expenses of the other driver if you are at fault and damage his car or injure him? ____Yes____ No

27. Was claim made against you or your insurance company as a result of the accident? ____Yes ____No

28. Suppose you had a choice of two kinds of auto insurance that would cost about the same, which would you prefer?

	TYPE X	TYPE Y
Pays for....	All expenses of the accident (including medical costs and loss of earnings).	All expenses of the accident (including medical costs and loss of earnings).
	Sometimes an additional amount for pain and suffering.	No amount for pain and suffering.
Requires....	Establishing proof that other driver was at fault.	No need to establish proof that other driver was at fault.
	Right to sue for auto injuries.	No right to sue for auto injuries.
Payment by....	The driver found at fault or his insurance company.	Insurance company of injured person.

Type X ____ Type Y____ Don't Know____